Jan'y. 79 argd

9 Otto 628
Oct 2. 1878

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 217.

THE GERMANIA NATIONAL BANK OF NEW ORLEANS, ALCUS, SCHERCK & AUTEY, THE CRESCENT MUTUAL INSURANCE COMPANY, AND BENJAMIN J. WEST, APPELLANTS,

vs.

FRANK F. CASE, RECEIVER OF THE CRESCENT CITY NATIONAL BANK OF NEW ORLEANS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 11, 1876.

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1 *Bill of complaint.—Filed August 1st, 1874.*

UNITED STATES OF AMERICA.

Circuit court of the United States, fifth circuit and district of Louisiana.
In chancery.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans,
versus
HENRY ABRAHAM ET AL.
} No. 7261.

UNITED STATES OF AMERICA,
District of Louisiana:

To the honorable the judges of the circuit court of the United States for the district of Louisiana:

Frank F. Case, of the city of New Orleans, and a citizen of the State of Louisiana, receiver of the Crescent City National Bank of New Orleans, located in the State of Louisiana, being in all things duly and lawfully constituted, appointed, and qualified as such receiver
2 under and by virtue of the provisions of an act of the Congress of the said United States of America, entitled "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864, and of the acts of Congress amendatory thereof, brings this his bill, in his said capacity and character, against Henry Abraham, M'r's H. Adler, feme sole; James Barnwell, Jose Barba, Nehemiah Bass, Jesse K. Bell, Theodore Briene, M'r's Jane Bogart, widow; Cicero Branen, Boyd R. Routhgate, M'r's V. W. Burbridge and her husband, J. W. Burbridge; the commercial partnership of Behan, Thorn & Co., composed of W'm J. Behan, John Thorn, R. J. Buckner, Emory Clapp, M. W. Cabell; the Crescent Mutual Insurance Company, a corporation established and existing under and by virtue of the laws of the State of Louisiana, located at and doing business in the city of New Orleans; L. N. Baquie; the commercial partnership of Alcus, Scherck & Autey, composed of Lewis Alcus, Isaac Scherck, and S. D. Autey, domiciled in the city of New Orleans; Miss Margaret A. Cooley, W. A. Cromwell; the commercial partnership of Cobb, Dolhonde & Co., composed of John D. Cobb and Forrester Dolhonde, and domiciled in city of New Orleans; Thomas
3 J. Cooley; the commercial partnership of Cohn & Seligman, domiciled in city of New Orleans; William P. Ellison, Samuel Friedlander, Placide Forstall; C. H. Foster & Co., a commercial partnership composed of C. H. Foster and M. J. Rice, domiciled in city of New Orleans; Richard Flower, George Graham, William Gregory, M'r's D. Goodman, widow; the commercial partnership of E. J. Hart & Co., composed of E. J. Hart and B. B. Hart; M. Hirsh, E. B. Hogan, George W. Hynson, L. H. Gardner; the Germania National Bank of New Orleans, a corporation established and existing under and by virtue of the laws of the United States, and located at the city of New Orleans; the commercial partnership of Katz & Barnett, composed of Sigmund Katz, Jacob Katz, Nathaniel Barnett, and Seline Barnett, domiciled in the city of New Orleans; S. H. Kennedy, H. M. Kleine, Francois La Croix; the commercial partnership of Lehman, Abraham & Co., composed of Emanuel Lehman, Meyer Lehman, Henry Abraham, and Henry Beer, domiciled in city of New Orleans;

Gabriel Leaumont, A. Levi, W. C. Lipscomb, James McConnell,
4 William H. McLellan, James McWilliams, John McIntosh, Alden McLellan, A. McRae, tutor of the minor, Sumpter M. Speake; A. McRae, tutor of the minor, Mary J. Speake; H. S. McComb; the commercial partnership of Mummy, Schroeder & Co., composed of Edward F. Schroeder, John Ezle, and ; Fred. Manosky, James Murphy; the New Orleans Saving Institution, a corporation established and existing under and by virtue of the laws of the State of Louisiana, and located in city of New Orleans; E. Newman, Richard Nugent, William Norcom, Peter O'Donnell, M'r's Bridged O'Neil, feme sole; J. B. Oliver; M'r's Mary R. Palmer, widow; W. E. Pendleton, J. W. Price; the commercial partnership of Pritchard & Bickham, composed of Richard Pritchard and A. M. Bickham domiciled in city of New Orleans; David Pipes, M'r's M. A. L. Raymond, and her husband, W. C. Raymond; W. G. Robinson, R. M. Sawyer, J. A. Shakespeare, A. W. Sanford, William Steven, Andrew Stewart; the commercial partnership of Stevens & Seymour, composed of William H. Stevens and William E. Seymour, domiciled in city of New Orleans; Arthur Shieff, Charles B. Singleton; the Sun Mutual
Insurance Company of New Orleans, a corporation established
5 and existing under and by virtue of the laws of the State of Louisiana, located at the city of New Orleans; M'r's J. Sutherlen, feme sole; M. Schuppert; the commercial partnership of Stewart Bro's & Co., composed of Andrew Stewart, Hugh Stewart, and Andrew D. Gwynne, domiciled in the city of New Orleans; Samuel M. Todd, T. Y. P. Tureman, H. T. Vennard, Joseph Villis, C. M. Soria, H. O. Seixas, Henry Vorbaben, J. J. Warren, B. Witherspoon, Elias Wolf; M'r's Anna Maria Baker, widow; W. A. Wells, assignee in bankruptcy of T. E. Bridge; D. S. Bryan, M'r's Widow L. Fabio, O. B. Graham; Miss Ann Heation and M'r's Elizabeth Samuels, the heirs in possession of the estate of the late George Heation; M'r's Paul Juge, fils, and her husband, Paul Juge; the commercial partnership of McNeely & Milburn, composed of W. L. McNeely and T. H. Milburn, domiciled in city of New Orleans; Alfred Moulton and Raymond A. Bourk, executors of the estate of the late Anthony O'Dowd and the late Thomas Sullivan, said O'Dowd and said Sullivan having formerly been
connected as commercial partners under the name and style of
6 O'Dowd and Sullivan; Arthur Olivier; M'r's K. M. Patton, feme sole; Edm. Schirmer, T. Soniat; M'r's Jane E. Shumway, surviving widow in community of the late Samuel A. Shumway, and tutrix of his minor children, Ellen L. and Ida Shumway; J. M. Simmons and , assignee in bankruptcy of the estate of T. M. Simmons; M'r's Henrietta Wilson and her husband, Henry Wilson, she being seperated in property from her said husband; the Association for the Relief of the Jewish Widows and Orphans, a body corporate established and existing under and by virtue of the laws of the State of Louisiana, domiciled in the city of New Orleans; the Hebrew Foreign Mission of New Orleans, a body corporate established and existing under and by virtue of the laws of the State of Louisiana, domiciled in the city of New Orleans; the rector, wardens, and vestry of Trinity Church, formerly the Church of the Holy Trinity, of the city of Lafayette, a body corporate established and existing under and by virtue of the laws of the State of Louisiana, domiciled in the city of New Orleans; the Touro Infirmary
and Hebrew Benevolent Association of New Orleans, formerly
7 known as the Touro Infirmary, a body corporate established and existing under and by virtue of the laws of the State of Louisiana, domiciled in the city of New Orleans; Jules Lecesne, B. Davis,

Miguel Puig and surviving partners of the firm of Puig Bro's; W. S. Wheeler, B. J. West; the commercial partnership of Phelps, McCulloch & Co., composed of H. J. Phelps, J. G. McCulloch, and E. L. Nott; all of the parish of Orleans, in the district of Louisiana.

And thereupon your orator, in his said character and capacity, complains and says that heretofore, prior to the 1st day of February, A. D. 1872, the said Crescent City National Bank of New Orleans was a corporate banking institution created and organized under the laws of the State of Louisiana, in that respect and behalf made and provided, and at that time in force in said State of Louisiana, and was carrying on the business of banking under the authority of said State law, and was known and designated as and by the corporate name of the Crescent City Bank.

8 That afterwards, and on or about the 15th day of February, A. D. 1872, the said Crescent City Bank, by due and regular proceedings had and taken under and by authority of said act of Congress above referred to, in due form of law changed its character and form of organization from a bank acting under the authority of the State law of Louisiana to that of a national banking association organized and acting under the authority of said act of Congress above mentioned, and became and was changed and converted into a national banking association under the name and style of the Crescent City National Bank of New Orleans.

And the due and proper certificate having been made and delivered to said bank by the Comptroller of the Currency, the officer of the United States of America charged by law with that duty, said bank became and was authorized to and did commence and for some considerable time continued to carry on the business of banking as a national bank under the

9 provisions of said act of Congress aforesaid, and the responsibility and liability of the said several officers and shareholders of the capital stock of said bank became and was fixed, established, governed, and determined by the said act of Congress the same in all respects as if said bank had been originally created and established by and under the *the* provisions of the said law of the United States. That the said bank, at the time when the same was acting and existing by virtue of said State law, at no time had a paid-up capital stock of five millions of dollars and a surplus of twenty per cent. on hand, and therefore the said shareholders can claim and are entitled to no exemption or exception from their several liabilities as shareholders in said Crescent City National Bank, as fixed and established by the law of the United States.

And your orator further shows unto your honors that on or about the 17th day of March, A. D. 1873, said bank failed to redeem its circulating

10 notes upon demand made, and for that and other reasons, such as the general insolvency of said bank and its inability to meet and discharge its obligations as a banking institution, and its failure to comply with the provisions of the law governing national banking associations, the said Comptroller of the Currency, with full, due, and lawful authority, appointed a receiver for said bank, and the same was in due form of law put in liquidation, as required by said act of Congress. That your orator is at this time such receiver. That the assets and credits of said bank are wholly insufficient to pay the debts and liabilities of said bank or discharge the just and lawful debts due and owing by said bank to its creditors, and that it is and has become necessary, in order to pay and discharge said debts, to enforce the liability of the several shareholders of the capital stock of said bank, as fixed in such

case by said statutes of the United States. That the entire capital stock of said bank consists of five hundred thousand dollars, divided into five thousand shares of the par value of one hundred dollars per share.

11 And your orator further shows unto your honors that from the best information and belief of your orator, derived from an examination of the assetts of said bank, and considering the doubtful solvency of a large number of the debtors of said bank, your orator believes that, in order to pay and discharge all of the debts and obligations of said bank, the shareholders will be severally required to contribute and pay at least ninety-five dollars on each and every share held and owned by them, or within five dollars of the full par value of said shares, respectively. That the said Comptroller of the Currency, who is by law charged with that duty, has determined, ascertained, and decided that in order to pay said debts it is necessary to enforce the said individual liability of the said stockholders and owners, as provided, in said act of Congress, and particularly by the twelfth section of said act, and has accordingly in due form of law ordered and directed your orator to enforce said liability against each and every of said shareholders of the capital stock of said bank to the extent of seventy per centum of

12 the par value, or seventy dollars of each and every share thereof that in the event that the said contribution when collected shall be found insufficient to discharge all of said debts, other and further contributions will be demanded and enforced against said shareholders until the said debts shall be paid, or until the liability of said shareholders shall be exhausted, or the limit of such liability as fixed by law reached. That all of said defendants were shareholders in the capital stock of said bank at the time of its insolvency and suspension, and still are such shareholders or the representatives of said shareholders, in the manner and to the extent as hereinafter set forth, that is to say the said defendant Henry Abraham is the owner of five (5) shares, the said defendant M'r's H. Adler is the owner of three (3) shares, the said defendant James Barnwell is the owner of two (2) shares, the said defendant Jose Barba is the owner of two (2) shares, the said defendant Nehemiah Bass is the owner of one & two-fifth ($1\frac{2}{5}$) shares, the said defendant Jesse K. Bell is the owner of thirty (30) shares, the said defendant Theodore Brierre is the owner of seventeen (17) shares, the

13 said defendant M'r's Jane Bogart is the owner of three (3) shares, the said defendant Cicero Brown is the owner of twenty-five (25) shares, the said defendant Boyd R. Southgate is the owner of two (2) shares, the said defendant W'm Brown is the owner of thirty-one (31) shares, the said defendant M'r's V. W. Burbridge is the owner of ten (10) shares, the said defendant Behan, Thorne & Co. are the owners of ten (10) shares, the said defendant R. T. Buckner is the owner of twenty-five (25) shares, the said defendant Emory Clapp is the owner of one hundred & thirty shares, the said defendant M. W. Cabel is the owner of one & one-fifth ($1\frac{1}{5}$) shares, the said defendant the Crescent Mutual Insurance Company is the owner of one hundred and thirty (130) shares, the said defendant L. N. Baquie is the owner of twenty-five (25) shares, the said defendants Alcus, Scherck, and Autey, are the owners of seventy (70) shares, the said defendant Margaret A. Cooley is the owner of two (2) shares, the said defendant W. A. Cromwell is the owner of three (3) shares, the said defendants Cobb, Dolhonde & Co. are the owners of five (5) shares, the said defendant Tho's J. Cooley is the owner of four (4) shares, the said defendants Cohn & Seligman are the owners

14 of ten (10) shares, the said defendant W'm P. Ellison is the owner

of ten (10) shares, the said defendant Samuel Friedlander is the owner of twenty-six (26) shares, the said defendant Placide Frostall is the owner of eighty (80) shares, the said defendants C. H. Foster & Co. are the owners of twenty-four shares, the said defendant Richard Flower is the owner of thirty (30) shares, the said defendant George Graham is the owner of one (1) share, the said defendant W'm Gregory is the owner of one (1) share, the said defendant M'r's D. Goodman is the owner of two (2) shares, the said defendants E. J. Hart & Co. are the owners of two (2) shares, the said defendant M. Hirsh is the owner of five (5) shares, the said defendant E. B. Hogan is the owner of one & one-fifth ($1\frac{1}{5}$) shares, the said defendant George W. Hynson is the owner of one hundred and sixty-one (161) shares, the said defendant L. H. Gardner is the owner of one hundred and fifty-six (156) shares, the said defendant the Germania National Bank is the owner of fifty (50) shares, the said defendants Katz & Barnett are the owners of thirty (30) shares, the said defendant S. H. Kennedy is the owner of forty (40) shares, the said defendant H. M. Kleine is the owner of ten (10) shares, the said defendant Francois Lacroix is the owner of twenty (20) shares,
15 the said defendants Lehman, Abraham & Co. are the owners of fifteen (15) shares, the said defendant Gabriel Leaumont is the owner of five (5) shares, the said defendant A. Levi is the owner of seventeen (17) shares, the said defendant W. C. Lipscomb is the owner of five (5) shares, the said defendant James McConnell is the owner of four (4) shares, the said defendant William H. McLellan is the owner of twenty-four (24) shares, the said defendant James McWilliams is the owner of eighteen (18) shares, the said defendant John McIntosh is the owner of two (2) shares, the said defendant Alden McLellan is the owner of six (6) shares, the said defendant A. McRae, tutor of the minor Sumpter M. Speake, is the owner of five (5) shares, the said defendant A. M. Rae tutor of the minor Mary I. Speake, is the owner of five (5) shares, the said defendant H. S. McComb is the owner of two hundred and fifty (250) shares, the said defendants Mummy, Schroeder & Co. are the owners of fifty-six (56) shares, the said defendant Fred. Manosky is the owner of one (1) share, the said defendant James Murphy is the owner of seven (7) shares, the said defendant The New Orleans Saving Institution is the owner of fifty-one (51) shares, the said defendant E.
16 Newan is the owner of ninety (90) shares, the said defendant Richard Nugent is the owner of fourteen (14) shares, the said defendant W'm Norcom is the owner of twenty (20) shares, the said defendant Peter O'Donnell is the owner of ten (10) shares, the said defendant M'r's Bridget O'Neil is the owner of one & four-fifths ($1\frac{4}{5}$) shares, the said defendant J. B. Olivier is the owner of four (4) shares, the said defendant M'r's Mary R. Palms is the owner of five (5) shares, the said defendant W. E. Pendleton is the owner of three (3) shares, the said defendant J. W. Price is the owner of five (5) shares, the said defendants Pritchard & Bickham are the owners of seventy-five (75) shares, the said defendant David Pipes is the owner of twenty (20) shares, the said defendant M'r's M. A. L. Raymond is the owner of two (2) shares, the said defendant W. G. Robinson is the owner of ten (10) shares, the said defendant R. M. Sawyer is the owner of two (2) shares, the said defendant J. A. Shakespeare is the owner of twenty-seven (27) shares, the said defendant A. W. Sanford is the owner of ten (10) shares, the said defendant William Steven is the owner of ten (10) shares, the said defendant Andrew Stewart is the owner of five (5) shares, the said
17 defendants Stevens & Seymour are the owners of thirteen (13) shares, the said defendant Arthur Shieff is the owner of twelve

(12) shares, the said defendant Charles B. Singleton is the owner of two (2) shares, the said defendant the Sun Mutual Insurance Company of New Orleans is the owner of twelve (12) shares, the said defendant M'r's J. Sutherlen is the owner of three (3) shares, the said defendant M. Schuppert is the owner of one (1) share, the said defendant Stewart Bro's & Co. are the owners of fifty (50) shares, the said defendant Samuel M. Todd is the owner of two (2) shares, the said defendant T. Y. P. Tureman is the owner of one (1) share, the said defendant H. T. Vennard is the owner of five (5) shares, the said defendant Joseph Villis is the owner of two shares, the said defendant C. M. Soria is the owner of one hundred (100) shares, the said defendant H. O. Seixas is the owner of fourteen (14) shares, the said defendant Henry Vorbaben is the owner of two (2) shares, the said defendant J. W. Warren is the owner of four (4) shares, the said defendant B. Witherspoon is the owner of (20) twenty shares, the said defendant Elias Wolf is the owner of three (3) shares, and the said defendant M'r's Anna Maria Baker is the owner of three (3) shares, and the said defendant W. A. Wells, assignee, in bank-
18 ruptcy of F. E. Bridge, is the owner of five (5) shares, and the said defendant D. S. Bryan is the owner of twenty-two (22) shares, and the said defendant Widow L. Fabio is the owner of eight (8) shares, and the said defendant O. B. Graham is the owner of three (3) shares, and the said defendants Miss Ann Heation and M'r's Elizabeth Samuels, as the heirs in possession of the estate of George Heation, are the owners of thirteen (13) shares, and the said defendant M'r's Paul Juge, fils, is the owner of twelve (12) shares, and the said defendants McNeely & Milburn are the owners of ten (10) shares, and the said defendants Alfred Moulton and Raymond A. Bourk, executors of the estate of Anthony O'Dowd, and Thomas Sullivan are the owners of two (2) shares, and the said defendant Arthur Olivier is the owner of five (5) shares, and the said defendant M'r's K. M. Patton is the owner of six (6) shares, and the said defendant Edm. Schirmer is the owner of three (3) shares, and the said defendant T. Soniat is the owner of four-fifths ($\frac{4}{5}$) of a share, and the said defendant M'r's Jane E. Shumway, surviving widow in community of the late Samuel A. Shumway, and tutrix of his minor children, is the owner of ten (10) shares, and the said defendant , assignee in bankruptcy of the estate of T. M. Simmons, the owner of fifty (50) shares, and the said defendant M'r's Henrietta
19 Wilson, wife of Henry Wilson, is the owner of two (2) shares, and the said defendant The Association for the Relief of Jewish Widows and Orphans is the owner of two (2) shares, and the said defendant corporation the Hebrew Foreign Mission of New Orleans is the owner of fifteen (15) shares, and the said defendant corporation the rector, warden, & vestry of Trinity Church is the owner of six (6) shares, and the said defendant corporation the Touro Infirmary and Hebrew Benevolent Association of New Orleans is the owner of ten (10) shares, the said defendant the Touro Infirmary and Hebrew Benevolent Association of New Orleans is the owner of ten (10) shares, the said defendant Jules Lecesne is the owner of ten (10) shares, the said defendant B. Davis is the owner of fifty (50) shares, and the said defendant, Miguel Puig, surviving partner of the firm of Puig Bro's, & the said firm are the owners of one (1) share, and the said defendants Phelps, McCulloch & Co. are the owners of fifty (50) shares, and the said defendant W. S. Wheeler is the owner of forty (40) shares, and the said defendant B. F. West is the owner of fifty-eight (58)
20 shares.

And your orator further shows unto your honors that due de-

mand for the payment of said sum of money, so due from each of said defendants, shareholders, has been made, and that said defendants have as yet wholly failed and neglected to pay the same or any part thereof.

To the end, therefore, that all the said above-named defendants, and any and all of said confederates, when discovered, may, upon their several and respective corporal oaths, full, true, and direct and perfect answers make to all and singular the matters hereinbefore stated and charged, as fully and particularly as if the same were hereinafter repeated, and they severally thereunto interrogated; and that not only to the best of their respective knowledge, remembrance, but also to the very best of their several and respective information, hearsay, and belief; and more especially that they may such answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are respectively required to answer, that is to say:

21 First. Whether you at any time owned any share or shares in the capital stock of the late Crescent City Bank? If yea, what was the par value of such share or shares? How many shares did you own? When did you acquire the same? From whom did you acquire the same, and what disposition did you make thereof, and were the said share or shares converted into stock in or of the said Crescent City National Bank of New Orleans, or any other national bank?

Second. Whether you at any time have owned any share or shares in the capital stock of the said Crescent City National Bank of New Orleans? If yea, when and how did you acquire the same? Do you hold or own the same now? Did you hold or own the same at the day and date when such bank suspended payment and banking operation, or at the day and date when the affairs of said bank were placed in the hands of the receiver?

22 Third. Whether you have in any way sold or otherwise disposed of any share or shares of the capital stock of said Crescent City National Bank of New Orleans? If yea, state the day and date of such sale or transfer, and the person, persons, or corporation to whom the same was or were transferred. The name, color, age, and occupation of the person or persons to whom you sold or transferred such stock and the actual price or consideration which you received for such transfer of such stock, and whether you paid or have offered any such transferee any money or other valuable promise or consideration to induce such transferee to accept such stock.

Fourth. Whether you did not, in transferring such stock, do so with the intent thereby to escape liability to be called upon, under the provisions of the act of Congress authorizing the establishment of national banks (referred to in this bill), to contribute to the payment of the debts and obligations due by said bank?

And your orator further prays that said defendants, and each of them, may come to a just and fair account, and that your honors will,

23 after due proceedings had, adjudge and decree in form interlocutory that the said defendants, and each for himself or for themselves (in case of any joint ownership), pay unto your orator, in his said official capacity of receiver as aforesaid, the said sum of seventy per centum of the par value thereof, or seventy dollars for and upon each and every of the shares of said capital stock of said bank owned by said defendants, respectively, and at the time when their respective liability to such contribution became and was fixed by the insolvency of said bank, without regard to any pretended transfers of such stock which they may have pretended to make after such insolvency and such lia-

bility had accrued; and that after the said amount which each of said stockholders are required at the present time by said order, directions, and decisions of the said Comptroller of the Currency to contribute shall, in due and proper form, have been computed, established, and determined, in respect of each of said defendants, by reference to one of the masters in chancery of this court, or otherwise, as the court shall
24 determine and order and decree against the said several defendants, decreeing them to pay the sum which they are at the time and by the present action of said Comptroller of the Currency required to pay, shall have been made and entered.

That your honors, in order to save further costs, expenses, and delay, do further order and decree that complainant's bill stand over and be retained, so that in the event that said contribution, so at this time required by the said action of said Comptroller, shall be found to be insufficient to discharge all of the debts and obligations of said bank due to its creditors, and a further contribution from the said shareholders of said bank, by reason of their liability as shareholders of the capital stock, shall become necessary, and shall be required by the further decision and action of said Comptroller, that upon such fact being in due form made to appear to the court, another and further decree or decrees for other and further contribution or contributions may be made in this cause without the expense and delay of a new bill of complaint
25 and new proceedings to enforce and collect the same; and that this bill may and shall stand until sufficient money shall have been realized to pay or discharge all of the debts of said bank, or until the liability of said defendants as such shareholders shall have been exhausted; and may it please your honors to grant unto your orator such other and further relief as to your honors shall seem meet and just, and the nature of the case shall require.

And may it please your honors to grant unto your orator the most gracious writ of subpœna, directed to each, all, and every of the said defendants named in the bill of complaint, the same in all respects as if each several defendant had been again named, and his or her several name, names, or capacity, had been written and repeated in this prayer (the same being omitted here to save costs and expense), and their several confederates, when discovered, thereby commanding them and every of them, under a certain form therein to be specified, personally to be and appear before your Honors, in this honorable court, and
26 then and there to answer all and singular the premises, and stand to perform and abide such order and decree therein as to your Honors shall seem meet and just, and your orator shall ever pray, &c.

(Signed) J. R. BECKWITH &
(") J. D. ROUSE,
Solicitors for Complainant.

J. R. BECKWITH,
Counsel.

NOTE.—Each and all of the defendants named in the foregoing bill of complaint are severally required to answer the interrogatories therein numbered first, second, third, and fourth.

(Signed) J. R. BECKWITH,
Counsel & Solicitor for Compl't.

Amendment to original bill.—Filed August 12th, 1874.

United States circuit court, district of Louisiana, ss:

FRANK F. CASE, RECEIVER OF THE CRESCENT CITY NATIONAL BANK OF NEW ORLEANS,
vs.
HENRY ABRAHAM ET AL.
No. 7261. In equity.

27 To the honorable the judges of the circuit court of the United States for the district of Louisiana:

Frank F. Case, complainant herein, receiver of the said Crescent City National Bank of New Orleans, shows unto your honors that heretofore, on the 1st day of August, A. D. 1874, your orator exhibited his said bill in equity herein against the said defendants, in this court; that among and included in said defendant shareholders in said national bank was and is the defendants named in said bill, on the fourth* page thereof, and in the last clause, on said fourth page of said bill as now of record in this court, the following, to wit: "The rector and wardens of the Trinity Church, formerly the Church of the Holy Trinity."

And your orator shows unto your Honors that at the time said bill was drafted and filed, by inadvertency the names of said rector and wardens of said church were omitted in the draft of said bill; that there has been as yet no appearance by any person representing said rector and wardens, and your orator now, in order that full justice may
28 be done in the premises, amends his said bill of complaint by adding and inserting, in their said representative capacity and character, the names of said rector and wardens, by adding and inserting in said bill of complaint, in continuation of the said fourth page thereof, and after the words, formerly the Church of the Holy Trinity, the following allegation: "The said rector and wardens aforesaid being S. S. Harris, rector, A. P. Cleveland, senior warden, J. J. Isley, junior warden, J. A. Blanc, vestryman, Geo. R. Preston, vestryman, Geo. W. Race, vestryman, Geo. S. Kansler, vestryman, H. N. Ogden, vestryman, W. G. Wheeler, vestryman, W'm Hartwell, vestryman, W. McN. Wright, vestryman, J. W. Gustine, vestryman, and William Flash, vestryman; all of which said last named rector, wardens, and vestrymen reside in the said district of Louisiana, and represent said Trinity Church."

And your orator prays as in his said bill of complaint, and further, that process of subpœna in due form of law may issue against all of said defendants in their said representative and official character,
29 the same in all respects as if their several names had not been by inadvertence omitted in said original bill of complaint; and will ever pray, &c.

(Signed) J. R. BECKWITH,
(") J. D. ROUSE,
Solicitors.

(Signed) J. R. BECKWITH.

* On the 6th page of this transcript, 22d line.

Appearance of Germania National Bank.—Chancery Order Book, Sept. 7th, 1874.

September rules.

MONDAY, *September 7th*, 1874.

FRANK F. CASE, RECEIVER OF THE CRESCENT CITY NATIONAL BANK OF NEW ORLEANS,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

The Germania National Bank of New Orleans, by its solicitor, C. B Buddecke, entered its appearance to the complainant's bill.

Answer of the Germania National Bank.—Filed October 5th, 1874.

U. S. circuit court, district of Louisiana. In equity.

FRANK F. CASE, RECEIVER OF THE CRESCENT CITY NATIONAL BANK OF NEW ORLEANS,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

30 The answer of the Germania National Bank, a body corporate under the laws of the United States, and one of the defendants to the bill of complaint of Frank F. Case, receiver of the Crescent City National Bank, complainant:

This defendant, now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering, saith that this defendant has been informed, and believes it to be true, that on the said 17th day of March, 1873, said Crescent City National Bank failed to redeem its circulating notes, and for that and other reasons failed to comply with the provisions of the said national banking act, and was duly put in liquidation, and that the said complainant was duly appointed the receiver thereof, as alleged in said complainant's said bill.

31 And this defendant, further answering, saith that it denies it to be true that the assets and credits of the said bank are wholly insufficient to pay the debts and liabilities of said bank, or to discharge the just and lawful debts due and owing by the said bank to its creditors, and that it is or has become necessary in order to pay and discharge said debts and liabilities to enforce the individual liability of the several shareholders of the capital stock of said bank, as fixed in such case by the said statute of the United States.

And this defendant, further answering, saith that it denies it to be true that the said Comptroller of the Currency has taken such action as is required by the said statute of the United States to enforce the individual personal liability of the stockholders of the said bank, and denies the existence of the alleged necessity for the enforcement, in whole or part, of the individual personal liability of the stockholders of said bank, as in the said complainant's said bill in that behalf mentioned; and this defendant submits it to this honorable court, whether said Comp-

troller had or possessed the right, power, or authority to determine and decide that the alleged necessity for the enforcement of the pre-
32 tended personal liability of the stockholders of bank existed.

And this defendant, further answering, denies it to be true that this defendant at the time of the insolvency and suspension of said bank was or is now a shareholder or the representative of any shareholder in the capital stock of said bank, in the manner and to the extent as in said complainant's said bill in that behalf mentioned.

And this defendant, further answering, saith that this defendant never was, nor is now the true, legal, bona-fide owner of any share or shares of the capital stock of said bank nor the representative of any such owners of any share or shares of the capital stock of said bank, nor ever had or claimed, or pretended to have, nor has now, or claims, or pretends to have any right, title, or interest of, in, or to the said shares of the capital stock of said bank, save and except in the manner and to the extent and under the circumstances as hereinafter stated and set forth.

And this defendant, further answering, saith that this defendant, on the 7th day of December, 1872, for a valid and legal consideration, did discount, for the benefit and account of Phelps, McCulloch & Co.,
33 a commercial firm domiciled in the city of New Orleans, and in the usual customary course of banking business, a certain promissory note for the sum of $14,000, made by said firm of Phelps, McCulloch & Co., to their own order and by them endorsed in blank, dated at New Orleans on the 7th day of December, 1872, and payable ninety days after date; that on said 7th day of December, 1872, said commercial firm of Phelps, McCulloch & Co., in order to secure the full and punctual payment of their aforedescribed note at maturity, did pledge unto this defendant by contract in writing, besides other personal property, certain one hundred shares in the capital stock of the said Crescent City National Bank; that the aforedescribed note, at its maturity, namely, on the 10th day of March, 1873, was duly protested for non-payment, after legal presentation and demand of said commercial firm of Phelps, McCulloch & Co., the makers thereof, all of the which aforegoing facts will appear by the said written contract of pledge, the said promissory note and the protest thereof, which this defendant prays leave to annex hereto and make part hereof, and to which, for greater certainty, this defendant craves leave to refer.

This defendant, further answering, saith that on the said 10th
34 day of March, 1873, at the maturity and upon the non-payment by said Phelps, McCulloch & Co. of the aforedescribed note, discounted by this defendant, as hereinbefore set forth, this defendant, acting in the character and capacity of pledgee, and in the usual customary course of business, did cause to be transferred to and placed in the name of this defendant on the books of said Crescent City National Bank, the aforesaid one hundred shares of the capital stock of said bank, but solely and exclusively to the extent of the right and interest of this defendant as pledgee of, in, or to the aforesaid one hundred shares of the capital stock of said bank; that, subsequently thereto, this defendant, being possessed solely of the right and interest of a pledgee in and to the aforesaid one hundred shares of the capital stock of said bank, by virtue of the said contract of pledge in writing, as hereinbefore set forth, and acting in the character and capacity of such pledgee thereof, did cause on the said 10th day of March, 1873, seventy-six (76) shares thereof, and on the 11th day of March, 1873, the remaining twenty-four (24) shares thereof, on the books of said bank, to be transferred to and

placed in the name of W'm A. Waldo, now deceased; that the
35 aforesaid transfers of the said shares of stock of said bank were made by this defendant unto the said William A. Waldo, as the agent of this defendant, the said William A. Waldo, transferree, holding and possessing in his name for the benefit and account of this defendant, and to the extent of the right and interest of this defendant as pledgee only, the aforementioned one hundred shares of stock of said bank; that the said one hundred shares of stock of said bank have so continued to remain and still stand on the books of said banks in the name of said William A. Waldo; that the aforesaid transfers of said shares of stock of said bank unto this defendant, and by this defendant unto said William A. Waldo, were duly made prior to the commission by said Crescent City National Bank of any and all acts of insolvency or bankruptcy; that prior to or at the time of the aforesaid transfers of said shares of stock of said bank, this defendant had no knowledge, nor had it been informed of any acts or facts indicating or showing said bank to be insolvent or bankrupt, or that said bank would become insolvent or bankrupt; that the aforesaid transfers of said shares
36 of stock of said bank were, so far as this defendant is concerned, made in good faith and solely to protect and preserve the rights and interest of this defendant as the pledgee of the said shares of stock of said bank, and in the belief that this defendant had and possessed the right by virtue of said contract of pledge in writing, to make or cause to be made the said transfers; that at the time of and subsequent to the aforesaid transfers the said shares of stock of said bank did possess the value of and could be sold for a sum exceeding thirty dollars for each and every share thereof; that had this defendant prior to or at the time of the aforesaid transfers the least knowledge or information of the impending insolvency or bankruptcy of the said bank, this defendant would never have made nor ever caused to be made the aforesaid transfers.

This defendant, further answering, submits to this honorable court that the right and interest of this defendant as the pledgee of the aforesaid shares of the capital stock of said bank, as hereinbefore set forth, was not, and has not been impaired, altered, or extinguished
37 in any manner whatever, notwithstanding that the said shares of stock of said bank were transferred to and placed in the name of, firstly, this defendant, and secondly, the said William A. Waldo.

And this defendant, further answering, submits and insists that this defendant as the pledgee of the aforesaid shares of the capital stock of said bank, as hereinbefore set forth, never was, nor is now, nor ever should be held liable in any manner whatever to account to the said complainant, or to pay to said complainant any sum or sums of money for or by reason of any of the aforesaid shares of stock of said bank, on, for, or by reason of the aforesaid transfers thereof.

And this defendant denies all and all manner of unlawful combination wherewith it is by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowl-
38 edge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this court shall direct, and humbly prays to be hence dismissed, with

its reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) C. B. BUDDECKE,
Defendants' Solicitor.

[SEAL OF BANK.] (") LOUIS SCHNEIDER,
Pres't Germania National Bank.

The answer of the defendant, the Germania National Bank, was taken before me this 5th day of October, in the year 1874, under the common seal of the said corporation, as by their seal affixed appears.

(Signed) M. M. COHEN,
Master in Chancery.

The answers of the Germania National Bank, defendant, through Louis Schneider, the president, to the interrogatories propounded by the complainant.

To interrogatory No. 1: This defendant for answer thereto saith that this defendant has not at any time owned nor held as owner any share or shares in the capital stock of the late Crescent City Bank.

39 To interrogatory No. 2: This defendant for answer thereto saith that this defendant has not at any time owned nor held as owner any share or shares in the capital stock of the late Crescent City National Bank of New Orleans.

To interrogatory No. 3: This defendant for answer thereto saith that this defendant on the 7th day of December, 1872, for the benefit and account of Phelps, McCulloch & Co., a commercial firm domiciled in the city of New Orleans, did discount in the usual course of business a certain promissory note for the sum of $14,000, made by said firm of Phelps, McCulloch & Co. to their own order and by them endorsed in blank, dated at New Orleans on the 7th day of December, 1872, and payable ninety days after date; that on said 7th day of December, 1872, said commercial firm of Phelps, McCulloch & Co., in order to secure the full and punctual payment of their aforedescribed note at maturity, did pledge unto this defendant by contract in writing, besides other property, one hundred shares in the capital stock of the said Cres-

40 ent City National Bank; that the aforedescribed note at its maturity was duly protested for non-payment after legal presentation and demand of said commercial firm of Phelps, McCulloch & Co., the makers thereof; all of the which aforegoing facts will appear by the said written contract of pledge, the said promissory note, and the protest thereof, which this defendant prays leave to annex hereto and make part hereof, and to which, for greater certainty, this defendant craves leave to refer. This defendant, further answering, saith that on the 10th day of March, 1873, at the maturity and upon the non-payment by said Phelps, McCulloch & Co. of the aforedescribed note, discounted by this defendant as hereinbefore set forth, this defendant, acting in the character and capacity of pledgee, and in the usual customary course of business, did cause to be transferred to and placed in the name of this defendant on the books of said Crescent City National Bank the aforesaid one hundred shares of the capital stock of said bank, but solely & exclusively to the extent of the right and interest of this defendant as pledgee in and to the aforesaid one hundred shares of the capital stock of the said Crescent City National Bank; that

41 subsequently thereto, this defendant being possessed solely of the right and interest of a pledgee in and to the aforesaid one hundred shares of the capital stock of said bank, by virtue of the said con-

tract of pledge in writing, as hereinbefore set forth, and acting in the character and capacity of such pledgee thereof, did cause, on the said 10th day of March, 1873, seventy-six (76) shares thereof, and on the 11th day of March, 1873, the remaining twenty-four (24) shares thereof on the books of the said bank to be transferred to and placed in the name of one William A. Waldo, at said time a white person of the age of 26 years, and of the occupation of clerk in the banking office of this defendant, but who since then, on the 13th day of August, 1874, departed this life, which aforesaid transfers of the said shares of the capital stock of said bank were made by this defendant unto the said William A. Waldo, as the agent of this defendant, the said William A. Waldo, transferee, holding and possessing in his name, for the benefit and account of this defendant in the said capacity of agent of this defendant, and to the extent of the right and interest of this defendant as pledgee, the aforementioned one hundred shares of the capital stock of said

42 Crescent City National Bank; and that said one hundred shares of the capital stock of said bank so remain and still stand in the name of said William A. Waldo on the books of said bank; that the aforesaid transfers of said shares of stock of said bank unto this defendant, and by this defendant unto said William A. Waldo, were duly made prior to the commission by said bank of any and all acts of insolvency or bankruptcy; and that to the best and utmost of the knowledge, remembrance, information, and belief of this defendant the aforesaid shares of stock of the said bank, at the time of and even subsequent to the aforesaid transfers, did possess and were of the value of thirty-five or forty dollars for each and every share thereof; that no price nor consideration was received by this defendant for or in view of the aforesaid transfer by this defendant unto the said William A. Waldo, of the abovementioned one hundred shares of the capital stock of the said Crescent City National Bank, nor did this defendant pay or offer any money or other valuable promise or consideration to induce said William A. Waldo, transferee, to accept the said transfers as hereinbefore set forth.

43 To interrogatory No. 4: This defendant for answer thereto saith that the transfers of the said shares of stock of said bank, as hereinbefore in answer to interrogatory No. 3 more fully stated and set forth, were by this defendant made in good faith and solely to protect and preserve the right and interest of this defendant as the pledgee thereof, and in the belief that this defendant as the pledgee thereof had the legal right so to do, and without regard to the said provisions of the said act of Congress of the United States.

Documents A, B, & C annexed.

[SEAL OF BANK.] (Signed) LOUIS SCHNEIDER,
President of the Germania National Bank.

Sworn to and subscribed before me, this 5th day of October, A. D. 1874.

(Signed) M. M. COHEN,
Master in Chancery.

Document A.—Filed with answer of the Germania National Bank, October 5th, 1874.

United States circuit court.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans,
vs.
HENRY ABRAHAMS ET AL. } No. 7261.

44 $14,000.] NEW ORLEANS, *Decem.* 7, 1872.

Ninety days after date we promise to pay to the order of ourselves fourteen thousand $\frac{00}{100}$ dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

(Signed) PHELPS, McCULLOCH & CO.

No. , due .

(Endorsed:) #13504. Phelps, McCulloh & Co. $14,000. M'ch, 10.
(Also endorsed:) (Signed) Phelps, McCulloch & Co.

Document B.—Filed with answer of Germania National Bank, October 5th, 1874.

10th of March, 1873.

Protest.

Phelps, McCulloch & Co. note.

Amount, $14,000.00.
Interest.
Protest, 3.00.
Stamps.
To Germania Nat'l Bank of New Orleans.

U. S. circuit court.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

UNITED STATES OF AMERICA,
State of Louisiana:

45 By this public instrument of protest be it known that on this tenth day of March, in the year one thousand eight hundred and seventy-three, at the request of the cashier of and holder for the Germania National Bank of New Orleans, holder of the original note whereof a true copy is on the reverse hereof written, I, Joseph Cohn, a notary public in and for the city and parish of New Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said note at the office of Mess'rs Phelps, McCulloch & Co., in this city, to M'r Nott, a member of said firm, and demanded payment thereof, and was answered that the same could not be paid.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against

the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damage, costs, charges, and interest, suffered or to be suffered, for want of payment of the said note.

Thus done and protested in the presence of Charles F. Bany and Emile L. Bauer, witnesses.

46 In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[NOTARY SEAL.] (Signed) JOSEPH COHN,
Notary Public.

$14,000.] NEW ORLEANS, *Dec.* 7, 1872.

Ninety days after date we promise to pay to the order of ourselves fourteen thousand dollars, value received, with interest at the rate of eight per cent. per annum from maturity until paid.

PHELPS, McCULLOCH & CO.

(Endorsed:) Phelps, McCulloch & Co.

Document C.—Filed with answer of Germania National Bank, October 5th, 1874.

United States circuit court, district of Louisiana.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

Pledge.

CITY OF NEW ORLEANS,
Seventh day of December, 1872.

Whereas the Germania National Bank of N. O. has discounted
47 a certain promissory note for the sum of fourteen thousand dollars, made by Phelps, McCulloch & Co., to the order of themselves, dated on the seventh day of December, 1872, payable ninety days after date thereof:

Now, in order to secure the full and punctual payment of said promissory note at maturity, the undersigned, Phelps, McCulloch & Co., do hereby pledge to said Germania National Bank the property following, to wit:

One hundred (100) shares Crescent C. National Bank.....
Fifty-five (55) " Mutual National Bank.....

Total..... 8

And it is hereby agreed that in the event of the non-payment of said note at its maturity said Germania National Bank, hereby authorized (jointly or separately) as agent of the undersigned, to cause said pledged property to be disposed of for cash, at public or private sale, at the option of said Germania National Bank without recourse to legal proceedings; and to this end, to sign on the books of the corporation or companies whose shares are hereby hypothecated as above, any and all transfers of said stock that may be necessary in the premises, in accordance

with the rules and regulations of said corporate bodies or com-
48 panies, and the proceeds of said sale shall be appropriated to the payment of the aforesaid note, with interest accrued thereon, if any, and all commissions, costs and charges attending said sale.

(Signed) PHELPS, McCULLOCH & CO. [L. S.]

(Signed) EDGAR NOTT, for 5 shares.

Witness:
EDGAR.

Entry in chancery order-book.—October 5th, 1874.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

The defendants, the Germania National Bank, have, by their solicitor, C. B. Budducke, this day filed their answer to the complainant's bill.

Replication to answer of Germania National Bank.—Filed October 31st, 1874.

U. S. circuit court.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

49 DISTRICT OF LOUISIANA, *ss:*

Circuit court of the United States, district of Louisiana. In equity.

FRANK F. CASE, REC'R CRESCENT CITY NAT'L B'nk, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

Replication to the separate answer of the Germania National Bank of New Orleans.

This repliant, saving and reserving unto himself all and all manner of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove said bill to be true, certain, and sufficient in law to be answered unto, and that said answer of said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant.

Without this, that any other matter or thing whatsoever in said answer contained, material or effectual in law to be replied unto, confessed, and avoided, traversed or denied, is true.

All which matters and things repliant is and will be ready to aver and prove, as this honorable court shall direct, and humbly prays
50 as in and by his said bill he hath already prayed.

(Signed) J. D. ROUSE,
Solicitor and Counsel for Compl'n't.

Entry in chancery order-book.—October 31st, 1874.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

The complainant herein has this day filed his replication to the separate answer of the Germania National Bank.

Order allowing amendment to bill as to Germania Nat'l Bank.—Entered and filed January 28th, 1875.

U. S. circuit court, district of Louisiana.

FRANK F. CASE, REC'R CRESCENT CITY NAT'L Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

On motion of J. D. Rouse & J. R. Beckwith, solicitors for said complainants, suggesting that through an error in the books of the Crescent City Nat'l Bank, the complainant in his original bill of com-
51 plaint charged the defendant, the Germania National Bank of New Orleans, with being owner of fifty shares of the capital stock of said Crescent City National Bank, and that said defendant's answer discloses the fact that said defendant should have been charged as owner of one hundred such shares, and on presenting the affidavit of said complainant as required by the rules of practice, and proof of notice of this application to said defendant, it is ordered that complainant have leave to withdraw his replication to said defendant's answer, and to amend his bill accordingly.

Amended bill as to Germania National Bank.—Filed January 28th, 1875, by leave of Court.

United States circuit court for district of Louisiana. In equity.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

To the honorable the judges of said court:

Frank F. Case, receiver of the Crescent City National Bank of New Orleans, complainant herein, respectfully shows unto your honors that heretofore, to wit, on the first day of August, 1874, your orator
52 exhibited his said bill in equity herein, wherein, among other defendants therein named, the Germania National Bank of New Orleans is made defendant as a shareholder in the said Crescent City National Bank, and is, on the 12th page of said bill as now of record in this court charged to be the owner of fifty shares of the capital stock of said Crescent City National Bank, as follows, to wit: "The said defendant, the Germania National Bank, is the owner of fifty (50) shares."

And your orator shows that at the time said bill was drafted and filed, through an error in the stock-ledger, the said defendant, the Germania National Bank, was so charged as the owner of fifty shares of

said capital stock, whereas the said defendant was the owner of one hundred shares of the capital stock of said Crescent City National Bank.

And your orator, now that full justice may be done in the premises, amends his said bill of complaint by striking out in line 20* of the 12th page of said bill the word "fifty," and inserting the words "one hundred" immediately following the words "Germania National
53 Bank is the owner of," and preceeding the words "shares" in said line.

And your orator prays as in his said bill of complaint he has already prayed.

(Signed) J. D. ROUSE,
Sol'r for Compl't.

(Signed) J. R. BECKWITH,
Counsel.

STATE AND DISTRICT OF LOUISIANA, *ss:*

This day personally appeared before me, the undersigned authority, Frank F. Case, who, being by me first duly sworn, deposed and said that he is the complainant in the above-entitled suit, No. 7261, and the foregoing amendment of his said bill of complaint therein is necessary for the purposes of justice, and that his application to withdraw his replication to said defendant's answers and to file said amendment is not made for the purpose of vexation or delay.

(Signed) F. F. CASE.

Subscribed and sworn before me this 28th day of January, 1875.

(Signed) F. A. WOOLFLEY,
U. S. Commissioner.

54 The complainant has notified the defendant, the Germania National Bank of New Orleans, that on Thursday, January 28th, 1875, at 11 o'clock a. m., he will move the court for leave to withdraw his replication to said defendant's answer, and to file the within amendment to his bill.

New Orleans, January 27th, 1875.

(Signed) C. B. BUDDUCKE,
For Def't, Germania National Bank.

Answer of Germania National Bank to amended bill.—Filed April 3d, 1875.

United States circuit court for the fifth judicial circuit. In chancery.

FRANK F. CASE, RECEIVER OF THE CRESCENT CITY NATIONAL BANK of New Orleans, complainant,
vs.
HENRY ABRAHAMS, DEFENDANT. } No. 7261.

The answer of the Germania National Bank, a body corporate under the laws of the United States, and defendants to the amended bill of complaint of Frank F. Case, receiver of Crescent City National Bank, complainant.

These defendants, saving and reserving to themselves the same ben-

*On the 14th page, on the 25th line of this transcript.

efit of exception to the said amended bill as by their former an-
55 swer to the original bill of complaint of the said complainant is saved and reserved for answer thereto, or to so much thereof as these defendants are advised is in any wise material or necessary for them to make answer unto, answer and say that these defendants do adopt and reaffirm each and singular all the allegations and averments as by them stated and averred and contained in their said former answer to the said original bill of complaint of said complainant, and these defendants do adopt and make their former answer to said original bill of complaint of said complainant as their present answer to the said amended bill of complaint; without this, that there is any other matter, cause, or thing in the said amended bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this hon'ble court shall direct, and humbly pray to be
56 hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) C. B. BUDDUKE,
Defendants' Solicitor.

[SEAL OF BANK.] (Signed) LOUIS SCHNEIDER,
Pres't Germania National Bank.

The answer of the defendants, the Germania National Bank, was taken before me this second day of April, in the year 1875, under the common seal of the said corporation, as by their seal affixed appears.

[SEAL.] (Signed) M. M. COHEN,
Master in Chancery for the Fifth Circuit & District of Louisiana.

Entry in chancery order-book.—April 3d, 1875.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

The Germania National Bank, by its solicitor, C. B. Budduke, has this day filed its answer to the amended bill of the complainant.

57 *Replication to answer of Germania National Bank to amended bill. Filed April 8th*, 1875.

DISTRICT OF LOUISIANA, *ss:*

Circuit court of the United States, district of Louisiana. In equity.

F. F. CASE, RECEIVER OF THE CRESCENT CITY Nat'l Bank,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

Replication to answer of Germania Nat'l Bank to amended bill.

This repliant, saving and reserving unto himself all and all manner of exception to the manifold insufficiencies of the said answer, for replica-

tion thereunto saith that he will aver and prove said bill to be true, certain, and sufficient in law to be answered unto, and that said answer of said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly pray,

58 as in and by said bill and amended bill he hath already prayed.

(Signed) J. R. BECKWITH,
Solicitor & Counsel for Complainant.

Entry in chancery order book.—April 8th, 1875.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans,
vs.
HENRY ABRAHAMS ET AL. } No. 7261.

The complainant herein has this day filed his replication to the separate answer of the Germania National Bank.

Appearance of Aleus, Scherck & Autey.—Chancery order book, Sept'r 7th, 1874.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

The defendants, the commercial firm of Aleus, Scherck and Autey, have this day, by their solicitor, Alf. Philips, esq., entered their appearance to the complainant's bill.

59 *Demurrer of defendants Aleus, Scherck & Autey.—Filed Sept'r 29th*, 1874.

United States circuit court, district of Louisiana.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

UNITED STATES OF AMERICA,
District of Louisiana:

To the honorable the judges of the circuit court of the United States for the district of Louisiana:

The demurrer of the commercial firm of Aleus, Scherck and Autey to a bill of complaint exhibited against them by Frank F. Case, receiver of the Crescent City National Bank of New Orleans, in the circuit court of the United States for the district of Louisiana.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are herein set forth and alleged, do demur thereto, and for cause of demurrer show—

60 That the Comptroller of the Currency is without authority to decide that the necessity exists for resorting to the individual liability of the stockholders, or to determine the extent to which it is necessary that said liability should be enforced, but that complainant's remedy, if any he has, is by presenting an account to this honorable court, showing the amount of debts due by the Crescent City National Bank, the amount of assets belonging to it, and compelling the shareholders to contribute rateably in proportion to the number of shares of stock held by them to the payment of any deficit which may exist.

Wherefore, and for divers other errors and imperfections, these defendants demand the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill or any of the matters and things therein contained, and prays to be hence dismissed with their reasonable costs in this behalf sustained.

(Signed) ALFRED PHILIPS,
(") E. B. KRUTTSCHUITT,
Solicitors for Defendant.

61 I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

(Signed) ALFRED PHILIPS,
(") E. B. KRUTTSCHUITT,
Solicitors for Defendants.

Stanton D. Autey, a member of the commercial firm of Alcus, Scherck and Autey, being duly sworn, deposes and says that the foregoing demurrer is not interposed for delay.

(Signed) STANTON D. AUTEY.

Sworn to & subscribed before me this 29th day of September, 1874.

(Signed) F. B. VINOT,
U. S. Comm'r.

Entry in chancery order-book.—September 29th, 1874.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

Alcus, Scherck & Autey, defendants herein, have by their solicitors, Alfred Philips and E. B. Kruttschuitt, filed their demurrer to the complainant's bill of complaint.

62 *Order. Demurrer dismissed.—Extract from the minutes March 17th*, 1875.

Circuit court of the United States, fifth circuit & district of Louisiana.
November term, 1874.

NEW ORLEANS, *Wednesday, March 17th*, 1875.

Court met pursuant to adjournment.
Present, Honorable W'm B. Woods, circuit judge.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

For reasons orally assigned by the court, it is ordered that the de-

murrer in this cause filed by Alcus, Scherck and Autey be overruled with costs.

Answer of Alcus, Scherck and Autey to the original bill.—Filed April 5th, 1875.

U. S. circuit court, dist. of Louisiana. In chancery.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL.
} No. 7261.

UNITED STATES OF AMERICA,
District of Louisiana:

To the honorable the judges of the circuit court of the United States for the district of Louisiana:

63 The answer of the commercial firm of Alcus, Scherck and Autey to the bill of complaint of Frank F. Case, receiver of the Crescent City National Bank of New Orleans, complainant.

These defendants, reserving to themselves all right of exception to the said bill of complaint, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, say:

That these defendants neither admit nor deny that the said complainant is legally qualified and constituted receiver of the said bank, for of his appointment and qualification defendants have no knowledge, and therefore leave the said complainant to make such proof thereof as he shall be able.

And these defendants, further answering, say, that they admit that prior to the 1st day of February, 1872, the Crescent City National Bank of New Orleans was a corporate banking institution under the laws of the State of Louisiana; that it was known and designated by the corporate name of the Crescent City Bank; that the said bank was
64 converted into a national banking association under the name of the Crescent City National Bank of New Orleans, in manner and form as is set forth in complainant's bill of complaint.

Defendants further admit that the said bank at no time had a paid-up capital stock of five million of dollars and a surplus of twenty per cent. on hand.

Defendants further admit the failure of the said bank to redeem its circulating notes upon demand made.

Defendants neither admit or deny that the said bank was put in liquidation in due form of law, and that the complainant is receiver of the same; for defendants have no knowledge thereof, and therefore leave the said complainant to make such proof thereof as he shall be able.

Defendants deny that any case is made out under the banking laws of the United States relied on by complainant in his bill which justifies the decree sought for, and for plea say that no such proceedings as are herein taken against the stockholders of said bank and these
65 defendants can be had or legally maintained until the Comptroller or receiver shall have exhausted the assets or credits of said bank now outstanding.

Defendants aver that there are large assets belonging to and credits held by said bank now outstanding, and these respondents are informed

and believe, and so aver, that if the same were collected there would be ample funds in hand to meet the debts of the bank, and under no circumstances could defendants be responsible for the amount claimed in the bill.

Defendants aver that they have been informed and believe that suits are now pending in this honorable court to recover a large part of the assets of said bank, which have been illegally disposed of by the officers of said bank, some of said suits being entitled as follows: No. 7030, Case, receiver, &c., vs. Cavaroc & Son; No. 7028, Case, receiver, &c., vs. State National Bank; No. 7031, Case, receiver, &c., vs. Duncan, Sherman & Co. Defendants aver that it is the duty of the receiver first to exhaust the debts due, and the claims and other assets of the said bank, and until these have been disposed of the said receiver cannot
66 enforce the individual liability of the stockholders in the manner claimed in complainant's bill.

Defendants aver that the pretention of the Comptroller and receiver that they can proceed against defendants on a rough estimate of what may, under remote contingencies, be due, is not warranted by law.

Defendants further say that they are not responsible in the manner claimed in the bill, for that the stockholders can only be held responsible individually, equally, and rateably, and not one for another, to the extent of the amount of their respective stock; and defendants further aver that no apportionment of the responsibility of the stockholders can be made equally and rateably until the amount necessary to pay the debts of the bank shall have been ascertained, and the amount of such responsibility can only be ascertained after the said receiver shall have exhausted all the claims and credits, dues and assets of said bank.

Defendants aver that they are informed and believe that there is no such deficit as is set forth in complainant's bill, and aver that when the assets are duly administered there will be found no deficit as
67 stated, and that these defendants cannot be sued for a contributory share as set forth in the bill, unless, after the administration of all the assets of the bank, and the ascertainment of the exact balance due by the stockholders, and after the administration, settlement, and liquidation of all the assets of the bank there should be a deficit, and not until then.

Defendants aver that the capital stock of said bank consist' of five hundred thousand dollars ($500,000) divided into five thousand shares of one hundred dollars each; that under the said act of Congress they can only be held responsible for an assessment based on the entire amount of stock, or for as many $\frac{1}{5000}$ths of the deficit which may eventually be found to exist in the assets and credits of said bank as they hold shares of stock in said bank.

Defendants further say that they cannot be precluded by any arbit'ary conclusion of the Comptroller of the Currency as to the violation by the said bank of the acts of Congress, and they aver that there is no warrant under the national banking act for these proceedings.

68 Defendants admit amicable demand and failure to pay as is set forth in complainant's bill.

And these defendants deny any and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge or belief of these defendants, all which matters and

things these defendants are ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) ALCUS SCHERCK & AUTEY.

(Signed) ALFRED PHILIPS,
(") E. B. KRUTTSCHUITT,
Solicitors for def'ts Alcus, Scherck & Autey.

69 Stanton D. Autey, a member of the commercial firm of Alcus, Scherck and Autey, the defendants named in the foregoing answer subscribed by the said firm, answers the interrogatories propounded to the said firm, as follows:

To the first interrogatory: The commercial firm of Alcus, Scherck & Autey did at one time own fifty shares of the Crescent City Bank. The par value of said shares was one hundred dollars. The said firm acquired the same in 1870 by purchase from various parties in the market. The said fifty shares were converted into stock of the Crescent City National Bank of New Orleans, the firm receiving two shares of the stock of said national bank for every five of the stock of said Crescent City Bank, making a total of twenty shares of Crescent City National Bank stock for the said fifty shares of Crescent City Bank stock.

To the 2d interrogatory: The said commercial firm did, at one time, own seventy (70) shares of the capital stock of the Crescent City National Bank of New Orleans. They acquired twenty shares of the same in the manner set forth in their answer to the first interrogatory,
70 and the remaining fifty shares of the same by subscription to the capital stock of said Crescent City National Bank. They do not now hold or own the same, nor did they hold or own the same at the date when the said bank suspended payment and banking operations, nor at the day and date when the affairs of said bank were placed in the hands of a receiver.

To the 3rd interrogatory: The said firm sold all the shares which they owned of the capital stock of the Crescent City National Bank, seventy in number, on the day of , 1873, to Julius Fox, a white person about twenty-one years old, and a clerk by occupation; the price paid to the said firm by the said Fox for the said stock was five dollars. The said firm never offered said transferee any money or other valuable promise or consideration to induce said transferee to accept said stock.

To the 4th interrogatory: The said firm made said transfer because it feared that the bank would become insolvent and considered the
71 investment in its stock a bad one.

(Signed) STANTON D. ANTEY,
For Alcus, Scherck & Antey.

Stanton D. Antey, being sworn, deposes and says, that he is a member of the commercial firm of Alcus, Scherck & Antey, the defendants named in the foregoing answer; answers to interrogatories subscribed by said firm that he has read the said answers and interrogatories, and knows the contents of the same, and that the same are true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he verily believes them to be true.

(Signed) STANTON D. ANTEY.

Sworn to and subscribed before me this 5th April, 1875.

(Signed) F. B. VINOT,
D'y Clerk.

Entry in chancery order book.—April rules, 1875.

MONDAY, *April 5th*, 1875.

FRANK F. CASE, REC'R OF THE CRESCENT City Nat'l Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

72 Alcus, Scherck & Antey, defendants herein, have this day by their solicitors, Alf. Philips & E. B. Kruttschnitt, filed their answer to complainant's bill.

Replication to answer of Alcus, Scherck & Antey.—Filed April 8th, 1875.

DISTRICT OF LOUISIANA, *ss:*

Circuit court of the United States, district of Louisian. In equity.

F. F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

Replication to the answer of Mess'rs Alcus, Scherck & Antey.

This repliant, saving and reserving unto himself all and all manner of exceptions to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove said bill to be true, certain, and sufficient in law to be answered unto, and that said answer of said defendant is uncertain, untrue, and insufficient to be replied unto by him, this repliant, without this, that any other matter or thing whatsoever in said answer contained material or effectual
73 in law to be replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly pray as is and by said bill he hath already prayed.

(Signed) J. R. BECKWITH,
Solicitor and Counsel for Complainant.

Entry in chancery order book.—April 8th, 1875.

FRANK F. CASE, REC'R OF THE CRESCENT City National Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

The complainant herein has this day filed his replication to the separate answer of Alcus, Scherck and Antey.

Suplemental and amended answer of Alcus, Scherck & Antey.—Filed March 21st, 1876.

U. S. circuit court, district of Louisiana. In equity.

F. F. CASE, REC'R OF THE CRESCENT CITY National Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

74 UNITED STATES OF AMERICA,
District of Louisiana:

To the honorable the judges of the circuit court of the United States for the district of Louisiana:

The supplemental and amended answer of the commercial firm of Alcus, Scherck & Antey, defendants, to a bill of complaint exhibited against them by Frank F. Case, receiver of the Crescent City National Bank of New Orleans, in the circuit court of the United States for the district of Louisiana.

These defendants, reserving to themselves all right of exception to said bill of complaint, and reserving the benefit of and insisting upon all the allegations and matters contained in their original answer herein filed, which is made part hereof, for further answer to said bill of complaint say that they admit that they were shareholders in the capital stock of said Crescent City National Bank at the time of its insolvency and suspension in manner and form, and to the number of shares as alleged and set forth in said bill of complaint.

And these defendants deny any and all manner of unlawful combination and conspiracy wherewith they are by the said bill charged,
75 without this, that there is any other matter, thing, or cause in said complainant's bill contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct.

Defendants humbly pray leave to file this amended and supplemental answer, that the same be decreed and taken to be a part of their original answer herein filed: and that after due proceedings they be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) E. B. KRUTTSCHUITT,
Solicitors for Def'ts Alcus, Scherck & Antey.

(Signed) ALCUS, SCHERCK & ANTEY.

Jurat waived and consent given to the filing of the foregoing amended answer, the same to be taken as a part of the original answer.

(Signed) J. D. ROUSE,
Solicitor for Comp't.

76 *Answer of the Crescent Mutual Insurance Company.—Filed October 5th*, 1874.

United States circuit court. In equity.

FRANK F. CASE, REC'R OF THE CRESCENT City Nat'l Bank,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

The answer of the Crescent Mutual Insurance Company to the bill in chancery filed against them & others in the above-entitled cause.

These defendants now & at all times hereafter saving to themselves all & all manner & benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary to them to make answer to, answering, say:

The Crescent Mutual Insurance Company did own shares in the capital stock of the late Crescent City Bank. In October, 1866, they received from J. J. Person & Co. in settlement with them 395 shares Crescent City Bank stock, pledged to them, and in the same month they received 25 shares from James M. Putman, in settlement, & in June, 1869, they purchased by order of the trustees 250 shares @
77 $30.00 per share. In July, 1871, the number of shares were reduced and the par value raised to $100.00, and they became entitled to 129⅕ shares and received certificate of 130 shares on surrender of certificates for 645 shares & payment of $80.00 for the ⅘ths of one share; for these 130 shares they have never received any certificate of shares in the Crescent City National Bank, but still hold the certificate of shares in the Crescent City Bank. They deny that they were shareholders in the capital stock of said Crescent City National Bank at the time of its insolvency & suspension or at any time, & deny that they are still such shareholders or the representatives of shareholders in the manner and to the extent as set forth in complainant's bill, or in any manner or to any extent, unless it be that the facts hereinabove set forth in this answer do in equity constitute them shareholders in the capital stock of said Crescent City National Bank, which they deny.

These defendants deny that the assets & credits of said Crescent City National Bank are wholly insufficient to pay the debts and liabilities of said bank or discharge the just and lawful debts due & owing by
78 said bank to its creditors, and deny that it is and has become necessary in order to pay and discharge said def'ts to enforce the liability of the several shareholders of the capital stock of said bank, & deny that the Comptroller of the Currency was authorized to determine that the alleged necessity of resorting to the pretended liability of said stockholders existed.

And these defendants deny all & all manner of unlawful combination & confederacy wherewith they are by the said bill charged; without this that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto and not herein & hereby well & sufficiently answered, confessed, traversed & avoided, or denied, is true to the knowledge or belief of these defendants; all which matters & things these defendants are ready & willing to aver, maintain, or prove as this

honorable court shall direct, & humbly pray to be hence dismissed with their reasonable costs & charges in this behalf most wrongfully sustained.

[SEAL.] (Signed) THO'S A. ADAMS,
President of the Crescent Mutual Insurance Company.

(Signed M. M. COHEN,
Solicitor for the Crescent M. In. Co.

79 The answer of the defendant, the Crescent Mutual Insurance Company, was taken before me this 3rd day of October, in the year 1874, under the common seal of said corporation, as by their seal affixed appears.

(Signed) CHA'S RICE,
Master in Chancery.

Answer to interrogatory 1st: The Crescent M. I. Co. did own shares in the capital stock of the late Crescent City Bank. In October, 1866, they received from J. J. Person & Co., in settlement with them, 395 shares Crescent City Bank stock, pledged to them; & in the same month they received 25 shares from James Putman, in settlement; & in June, 1869, they purchased, by order of the trustees, 250 shares, at $30.00 per share. In July, 1871, this number of shares was reduced & the par value raised to $100.00, and they became entitled to 129⅕ shares, & rec'd certificate of 130 shares on surrender of certificate for 645 shares & payment of $80.00 for the ⅘ths of one share. For these 130 shares they have never received any certificate of shares in the capital-stock of the Crescent City National Bank, but still hold the certificate of shares in the capital stock of the Crescent City National Bank,

80 & have never sold or otherwise disposed of any share. These shares were never converted into stock in or of the said Crescent City National Bank of New Orleans, or of any other bank.

To the 2nd interrogatory: These respondents never at any time have owned any share or shares in the capital-stock of the said Crescent City National Bank of New Orleans, unless the facts hereinbefore stated constitute the defendants such owners of said national-bank stock; and that on 22 Sept., 1870, at a meeting of the finance committee of defendants, M'r Newman was authorized to sign the agreement converting the Crescent City Bank into a national bank, on the terms proposed by the officers of the bank, and we have received dividends.

To the 3rd interrogatory: They answer, No.
To the 4th interrogatory: They answer, No.

(Signed) CRESCENT MUTUAL INS. CO.,
By THO'S A. ADAMS, *President.*

Sworn to and subscribed before me this 3rd day of October, A. D. 1874.

(Signed) CHA'S RICE,
Master in Chancery.

81 *Entry in chancery order-book.—October rules,* 1874. *Monday, October 5th,* 1874.

U. S. circuit court.

F. F. CASE, REC'R OF THE CRESCENT CITY Nat'l Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

The defendants, Crescent Mutual Insurance Company, by their solic-

itor, M. M. Cohen, filed this day their separate answer to the complainant's bill.

Replication to the answer of Crescent Mutual Ins. Co.—Filed Octo. 31*st*, 1874.

DISTRICT OF LOUISIANA, *ss:*

Circuit court of the U. S., dist. of Louisiana. In equity.

F. F. CASE, RECEIVER OF THE CRESCENT CITY National Bank of New Orleans, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

This repliant, saving and reserving unto himself all and all manner of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove said bill to be true, certain, and sufficient in law to be answered unto, and that said
82 answer of said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in said answer contained, material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct; and humbly pray' as in and by said bill he has already prayed.

(Signed) J. R. BECKWITH,
Solicitor and Counsel for Complainant.

Entry in chancery order-book.—Octo. 31*st*, 1874.

U. S. circuit court, dist. of Louisiana.

FRANK F. CASE, REC'R OF THE CRESCENT City National Bank of New Orleans, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

The complainant herein has this day filed his replication to the separate answer of the Crescent Mutual Insurance Company.

83 *Answer of B. J. West.—Filed Nov'r* 3*rd*, 1874.

United States circuit court, fifth circuit & district of Louisiana, in equity.

FRANK F. CASE, REC'R OF THE CRESCENT City National Bank of New Orleans, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

The seperate answer of Benjamin J. West, one of the defendants, to the bill of complaint of Frank F. Case, receiver of Crescent City National Bank of New Orleans, complainant.

This defendant, now and at all times hereafter saving and reserving

unto himself all benefit and advantage of exception that may or can be taken to the many errors and imperfections in said complainant's said bill of complaint contained, for separate answer thereto or unto so much and such parts thereof as this defendant is advised is or are material for him to make answer unto, this defendant, answering, saith:

That as to the allegation in said bill of complaint that there existed in this city a banking institution, encorporated by the laws of Louisiana, known and designated as the Crescent City Bank, and that,
84 about the period mentioned in said bill, the said bank was changed into a national banking institution, under the name & style of Crescent City National Bank of New Orleans, defendant admits was true; but the mode or method by which such change was made, defendant has no knowledge or information, and therefore neither denies or admits that that mode or method is correctly stated in said bill.

Respondent admits that said Crescent City Bank did not have a paid-up stock of five millions dollars. He further admits that about the period stated and alleged said bank stopped business, but for what reason defendant has no personal knowledge, but from information of others believes it was the result of the causes in said bill alleged.

That said bank was insolvent at the time of its stopping business, without personal knowledge & but from information of others, defendant admits to be true.

But as to the amount, value, availability, of the assets of the said bank, or the amount of its liabilities, defendant has no knowledge or information, nor has defendant any knowledge as to the necessity of enforcing the payment of any portion of the share' of the stock of said bank against the several shareholders, in order to discharge the
85 debts due by the bank.

Defendant knows nothing of the solvency of the debtors of said bank, either personally or by information.

Defendant does not admit but denies that it is necessary to demand of the several shareholders the sum of ninety-five or seventy per cent. of their several shares of said capital stock of said bank.

Respondent denies that at the time of the said alleged insolvency and suspension of said bank he was a shareholder or owner of any amount or number of shares of the capital stock of said bank. He denies that at that time he was in any way interested in any share whatever of said stock.

In answer to interrogatory first in said bill propounded, defendant states that he was owner of fifty-eight shares of the capital stock of the Crescent City Bank on the 9th February, 1870; that he bought 40 shares of par value of twenty-five dollars each, which were afterwards converted into 8 shares of par one hundred each; that on 7th June, 1871, defendant subscribed for 50 shares of par value of $100 each, and paid the said Crescent City Bank $5,000 for same. That these said 58 shares were afterwards converted into like number of shares of stock of the Crescent City National Bank of New Orleans.

86 In answer to interrogatory second in said bill propounded, defendant states that he was owner of 58 shares of the capital stock of Crescent City National Bank of New Orleans, acquired by him as stated in answer to the interrogatory first above, and no other shares. That he does not hold or own the said shares now, and did not own or hold the same or any portion thereof at the date of the suspension of said bank, nor did he so own or hold the same or any part thereof when said banks affairs were placed in the hands of the receiver.

In answer to interrogatory third in said bill propounded, defendant

states that on the 13th March, 1873, he sold all of said stock to G. J. Vincent, a white man, aged about 35 years, a salesman by trade, for the price of about ten dollars per share. That defendant did not pay said vendee or offered to pay him any money or other valuable promise or consideration to induce said vendee to accept such stock.

In answer to interrogatory fourth in said bill propounded, defendant states that in selling said stock, as already stated, he did not do so with the intent to escape liability to be called upon to contribute to the payment of the debts and obligations due by said bank; that he did
87 not know that he had incurred any such liability or that the condition of the affairs of the bank necessitated it. That defendant did not then know that the bank would suspend payment or prove insolvent; that defendant had been informed by M'r Summers, president of the bank, that the losses of the bank by the failure of De Lizardi would not exceed $125,000.

And this defendant further answering denies that this said complainant is entitled to the relief or any part thereof in the said complaint demanded, so far as the same affects this defendant, prays the same advantage of his aforesaid answer, or if he had pleaded or demurred to the said bill of complaint; and this defendant prays leave to be dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) B. J. WEST.
(Signed) R. H. MARR,
Solicitor for Def't.

Benjamin J. West, being duly sworn, does depose & say that he is the defendant named in the foregoing answer subscribed by him; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated
88 on information and belief, and to those matters he verily believes them to be true.

(Signed) B. J. WEST.

Subscribed to & sworn to before me this 3d day of November, 1874.
(Signed) K. LOEW, *U. S. C.*

Entry in chancery order-book of said filing.—November 3rd, 1874.

FRANK F. CASE, REC'R, &C., *vs.* HENRY ABRAHAM ET ALS. } No 7261.

B. J. West, one of the defendants herein, has this day by his solicitor, R. H. Marr, filed his answer to the complainant's bill of complaint.

Replication of answer to B. J. West.—Filed November 6th, 1874.

DISTRICT OF LOUISIANA, *ss:*

Circuit court of the United States, district of Louisiana. In equity.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

This repliant, saving and reserving unto himself all and all man-

89 ner of exception to the manifold insufficiencies of the said answer, for replication thereunto saith he will aver and prove said bill to be true, certain, and sufficient in law to be answered unto, and that said answer of said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in said answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by said bill he has already prayed.

(Signed) J. R. BECKWITH,
Solicitor and Counsel for Complain't.

Entry in chancery order-book of said filing.—November 6th, 1874.

FRANK F. CASE, REC'R OF THE CRESCENT CITY National Bank of New Orleans, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

The complainant herein has this day filed his replication to the answer of B. J. West.

90 *Order appointing F. A. Woolfley special examiner, &c.—Extract from the minutes, May 27th, 1875.*

U. S. circuit court, district of Louisiana.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

On motion of J. R. Beckwith, solicitor for complainant, it is ordered that F. A. Woolfley be appointed special examiner to take the depositions of the witnesses in this cause.

Agreement of counsel relative to the extension of time for taking testimony.—Filed Octo. 28th, 1875.

U. S. circuit court, district of Louisiana.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

It is hereby agreed between the undersigned solicitor for plaintiff and the undersigned solicitors for various parties defendant herein that the time for taking testimony in this cause be extended to the 2d Monday in January, 1876.

91 (Signed) FINNEY & MILLER,
For P. Forstall et al.

(Signed) J. D. ROUSE,
Solicitor for Complainant.

(Signed) E. B. KRUTTSCHNITT,
Solicitor for Aleus, Scherck & Autey, and Sam'l Freidlander.

Notice to take testimony, &c.—Filed December 24th, 1875.

United States circuit court, district of Louisiana. In equity.

FRANK F. CASE, REC'R OF THE CRESCENT City National Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

SIR: You will please take notice that the complainant in the above cause desires the evidence to be adduced therein to be taken orally, under the 67th rule of the supreme court, in equity, as amended; and you will further take notice that, by an order made in said cause, F. A. Woolfley was appointed examiner therein and that the examination on the part of said complainant will take before said examiner
92 at his office in the custom-house in this city, Wednesday next, 29th instant, at 11 o'clock a. m., and proceed as said examiner may direct.

New Orleans, Dec'r 24th, 1875.

Yours, &c.,

(Signed) J. D. ROUSE,
Solicitor for Complainant.

To E. B. KRUTTSCHNITT, esq.,
Solicitor for Alcus, Scherck & Autey, and Friedlander.
To C. B. BUDDECKE, esq.,
Solicitor for Germania National Bank.
To M. M. COHEN, esq.,
Solicitor for Crescent Mutual Insurance Co.
To R. H. MARR, esq.,
Solicitor for B. J. West.

Marshal's return on notice.

Received, December 27th, 1875, by the U. S. marshal and served a copy of this notice on the above-named persons, as follows: On E. B. Kruttschnitt and M. M. Cohen, on each personally, on the 27th inst.; on C. B. Buddecke, left at his office with his clerk, on the 27th inst.; on R. H. Marr, left at his office with his clerk, on the 27th inst.

(Signed) S. B. PACKARD,
U. S. Marshal,
By C. R. STEELE,
Dy Marshal.

93 *Testimony taken on the part of complainant under the 67th rule of practice for the courts of equity of the United States, by F. A. Woolfley, special examiner, duly appointed by the aforesaid court to take the depositions of the witnesses in the above-entitled cause.*

NEW ORLEANS, *Wednesday, December 29th*, 1875.

United States circuit court, fifth circuit, district of Louisiana. In equity.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans,
versus
HENRY ABRAHAM ET AL. } No. 7261.

Appearances: J. D. Rouse, J. R. Beckwith, esq'rs, solicitors for com-

plainants; M. M. Cohen, esq'r, solicitor for Crescent Mutual Insurance Co.; Cha's F. Buck, esqr., representing C. B. Buddecke, solicitor for Germania National Bank; E. B. Kruttschnitt, esq., for Aleus, Scherck & Autey.

Complainant offers in evidence the articles of association of the Crescent City National Bank of New Orleans, Exhibit A.

Also, certificate of the organization of the Cresent City National
94 Bank of New Orleans, Exhibit B.

Certificate of appointment of Charles Case, receiver, Exhibit C.

Certificate of appointment of Frank F. Case, receiver, Exhibit D.

Order of the Comptroller of the Currency calling for payment of instalments on the stock of the Crescent City National Bank, and ordering suit to be brought, Exhibit E.

Notarial certificate of protest of a circulating note of the Crescent City National Bank by Andrew Hero, j'r, notary public, Exhibit F.

CHARLES FAURIE, j'r, a witness produced, sworn, and examined on behalf of complainant, deposes and says:

By M'r Rouse for complainant:

Q. Were you the cashier of the Crescent City National Bank of New Orleans?

A. Yes, sir.

Q. How long, and until when?

A. I was in the bank when it first commenced business as the Crescent City Bank, and remained there until it was converted into a national bank.

Q. Were you cashier of the Crescent City National Bank until the time of its failure?

A. Yes, sir.

95 Q. Can you produce what you call the "transfer books" of the shares of stock of the Crescent City National Bank.

(Witness here produces a series of books marked "A²" and "B²" respectively.)

Q. Are these two books produced, marked "A²" and "B²," the transfer books?

A. Yes, sir.

Q. By whom were the transfers of stock in these two books written up?

A. They were written up by me, and during my absence by one of the clerks.

No cross-examination.

(Signed) CHA'S FAURIE, J'R.

Subscribed & sworn before me Dec. 29th, 1875.

(Sig'd) F. A. WOOLFLEY,
Special Examiner.

Complainants offer in evidence the two transfer books marked "A²" and B²." After which examination was continued until to-morrow, Thursday, December 30th, 1875, at one o'clock p. m.

NEW ORLEANS, *Dec'r 30th*, 1875.

FRANK F. CASE, RECEIVER, ETC.
vs.
HENRY ABRAHAM ET AL. } No. 7261.

Testimony resumed pursuant to adjournment.

Appearance this day: C. B. Cruttschnitt, esq., for Alcus, Scherck
96 & Autey: Charles F. Buck, esq'r, for Germania National Bank; M. M. Cohen, esq'r, for Crescent Mutual Insurance Company; J. D. Rouse and J. R. Beckwith, esq'rs, for complainant.

The complainant offers in evidence a certified copy of the original charter of the Crescent City Bank, with certificates annexed and of record, marked "I."

Also produces the act of protest before Andrew Hero, j'r, notary public, agreeably to promise made yesterday, Dec'r 29th, when it was offered in evidence, (Exhibit F.)

FRANK F. CASE, receiver, a witness produced, sworn, and examined on behalf of complainant, deposes and says:

By M'r Beckwith, for complainant:

Q. Are you the receiver of the Crescent City National Bank of New Orleans?

A. Yes, sir.

Q. Who has custody of the books and records of that bank?

A. I have.

Q. Can you produce the "minute book" of the proceedings of the board of directors?

A. Yes, sir. [Witness produces the book.]

97 Q. Is that the book of the minutes of the proceedings of the board of directors?

A. Yes, sir, of the Crescent City Bank.

Q. Do you know whether there are in that book any minutes on the reduction of the capital stock of the Crescent City Bank since its first organization?

A. I believe there are three reductions; on page 147 of this book there is a resolution of the board of directors under date of October 22d, 1866.

(Complainant offers the resolution to be found on page 147 of the minute-book in evidence, a certified copy to be furnished and marked "K.")

Q. On pages 148 and 159 what is there recorded as the action of the stockholders?

A. It is a reduction of the capital stock to $500,000.

Q. And on pages 166 and 167?

A. Said capital stock was still further reduced to $300,000. That is dated March 4th, 1868.

(Complainant offers in evidence the action of the stockholders, as recorded on pages 148, 149, and 166, 167, to be marked "L" on certified copy.)

Q. Look on pages 242 and 253, to the end of the latter page.

98 A. It is dated March 29th, 1871, and is a still further reduction of the stock.

(Complainant offers the same in evidence as recorded on pages 242, 243, of the minute-book, a certified copy to be furnished and marked "M.")

(Sig'd) FRANK F. CASE.

No cross examination.

Subscribed and sworn before me this 30th December, 1875.

(Signed) F. A. WOOLFLEY,
Special Examiner.

CHARLES FAURIE, J'r, a witness for the complainant, being recalled, deposes and says:

By M'r Rouse:

Q. On what date did the Crescent City National Bank suspend payment of the checks drawn by depositors against it?

A. On the 14th March, 1873.

Q. What was the principal cause of its insolvency?

A. What do you mean by insolvency?

Q. What losses did the bank suffer?

A. At that time, you mean?

Q. What principal losses had it suffered prior to its suspension and which induced its suspension?

99 A. We only heard that De Lizardi & Co., our correspondents in London, had failed.

Q. Did the Crescent City National Bank lose heavily by the failure of De Lizardi & Co., of London?

A. Yes, sir; I ascertained that since.

Q. When did De Lizardi & Co. of London fail?

A. On the 13th of February, 1873.

Q. What was the effect upon the bank with regard to its business?

A. As soon as the news arrived here that the house of De Lizardi & Co. of London had failed the depositors commenced drawing their balances.

Q. Did any creditors of the bank ask for securities?

A. Yes, sir; several came to the bank.

Q. Were any securities given?

A. Yes, sir; some of them.

Q. What was given?

A. Part of the portfolio.

Q. When was this done?

A. At sundry times; I don't remember the dates.

Q. What month?

A. During that month.

Q. The month of February?

A. Yes, sir.

100 Q. Can you state what the amount was to the credit of depositors on the 13th February, 1873?

A. I will have to refer to memoranda [memoranda produced]. On the 13th the deposits to the credit of individual depositors was $506,526.61.

Q. Was the amount rapidly reduced?

A. It was reduced, not very rapidly but gradually.

Q. Can you give the amount standing to the credit of depositors at any subsequent dates?

A. On the 14th February, 1873, it was reduced to $403,933.00, on the 25th February to $99,971.00, and on the 1st of March it stood $28,956.01; that is all.

Q. Can you tell what amount remained to the credit of depositors on the 16th March, 1873?

A. It was something like $3,000 and odd.

Q. Can you tell approximately the amount of bills sold by the Crescent City National Bank upon De Lizardi & Co. of London that were outstanding at the time of De Lizardi & Co.'s failure?

A. In sterling?

Q. Yes.

A. £111,000.

Q. Had there been remittances forwarded to cover this amount?

101 A. There were £80,000 remitted to cover that amount, leaving a balance of $170,000 due yet to De Lizardi & Co., as per statement.

Q. Was all of this lost to the bank?

A. I do not know that all of it was lost, but a great portion of it.

Q. Do you know whether any of it has been recovered by the bank?

A. No, sir; not now; I could not tell. I do not know that any of it has been recovered, only there were £9,000 in transit. I do not know what has become of it or whether it was collected or not.

Cross-examined by D. S. Bryon, esq., in P-P'a, defendant:

Q. State what you mean by what is lost.

A. I mean by "what is lost" the £80,000 we remitted to cover our drafts.

Q. Then it is £80,000 that were lost, which you had remitted to cover these drafts?

A. Yes, sir.

Q. Less the £9,000 in transit?

A. Yes, sir.

Q. About which £9,000 you do not know?

A. I do not know whether it has been collected or not.

102 Q. You do not know what steps have been taken in London to secure this money?

A. We at the time telegraphed to M'r Benjamin to see into the matter, and as soon as it was in the hands of the receiver he did. This M'r Benjamin I speak of is M'r J. P. Benjamin, Queen's counsel in London.

Q. You do not know what steps he took?

A. No, sir; I could not tell you.

Q. Do you know the result? Did he secure anything?

A. I could not tell you that because it was in the hands of the receiver.

Q. It passed out of your control?

A. Yes, sir.

Q. Out of the control of the officers of the bank?

A. Yes, sir.

Q. And you do not know what has taken place in regard to the matter since the affairs of the bank passed out of the hands of the officers of the bank?

A. No, sir; I can only tell you by hearsay, but that does not amount to anything.

103 Q. Do you know where M'r De Lizardi is now?

A. I could not tell you.

Q. Neither the one that was here nor the one that was in London?

A. No, sir.

By M'r New. For H. O. Seixas, and Pritchard, and Bickham, and C. M. Soria, defendants.

Q. Was M'r De Lizardi a director in the bank?

A. He was a director in the bank and then became vice-president.

Q. Was he a stockholder?

A. Yes, sir.

Q. To what extent?

A. I do not remember the amount.

Q. Have you got the stock book before you?

A. I have not got the stock book.

Q. Was he not a large stockholder?

A. Yes, sir.

Q. When did your connection with the bank cease; when it went into the hands of the receiver?

A. Yes, sir.

Q. What amount of money did you have on hand when you turned the bank over to the receiver?

A. What amount of money?

104 Q. Yes.

A. It could not be much; I do not remember the amount.

Q. Had any steps been taken during your connection with the bank to recover these collaterals that had been given out of your portfolio?

A. By me?

Q. By the bank.

A. To recover these collaterals from the banks?

Q. Yes.

A. You mean during the time it was in our possession?

Q. Yes.

A. No, sir; only I objected to giving the *the* portfolio to secure anybody; I did not wish to make any preference.

Q. What amount was given as preferences in that way?

A. I could not tell you now; the books will show, the statement-book.

Q. About how much?

A. It is over $170,000.

Q. You do not know of your own knowledge what steps have been taken since then to recover it?

A. I only know there was a suit entered against the Citizens' Bank to recover it.

105 Q. For how much was that? Was the suit instituted in the United States court?

A. Yes, sir.

Q. To recover the collaterals given that bank?

A. Yes, sir.

Q. Do you know the result of that suit?

A. No, sir; I could not tell you.

Q. About how much was given to the Citizens' Bank?

A. I gave that in my first testimony in the case.

Q. The record will show, but I merely desire to attract the judge's attention in reading that.

A. Yes, sir.

Q. Do you know of any other suits that were brought to recover the collaterals improperly given by the Crescent City Bank, out of its portfolio?

A. I think there was one against the State National Bank.

Q. Do you know of any other?

A. I do not remember any other; there must have been, but I do not know.

Q. Is there not one against C. Cavaroc and Son, and one against Duncan, Sherman & Co.?

A. Yes, sir; one against Duncan, Sherman & Co.

Q. And one against C. Cavaroc & Son?

106 A. I do not remember about C. Cavaroc & Son.

By M. M. Cohen, for Crescent Mutual Insurance Co., and Joseph A. Shakespeare, defendants:

Q. I desire to ask you a question in addition to those you have already

answered. You spoke about some preferences being given by the bank to other banks, out of its portfolio?

A. Yes, sir.

Q. Do you not know that in some instances, at that time, when portions of the portfolio were given, that further advances were made to the bank by the parties who received these portions of the portfolio, in addition to what they had already given—in the case of the Citizens' Bank, for instance?

A. Yes, sir; I am trying to refresh my mind.

Q. You testified in that case?

A. Yes, sir; and I would rather you would refer to my testimony in that case.

(M'r Rouse, for complainant, admits that at the time referred to there were advances made to the Crescent City National Bank, of which
107 $40,000.00 was advanced by the Citizens' Bank.)

Q. Do you not know that some of these cases were settled, or compromised, and the money received by the Crescent City National Bank, or by the receiver, such as in the case of Duncan, Sherman & Co. and the State National Bank?

A. I heard M'r Case say that he had collected from some of them, but I do not remember whom.

Q. You do not know how much was received from the Citizens' Bank?

A. I do not.

Q. How much from Duncan, Sherman & Co.?

A. I told you that I did not know the amount, but that I heard him say that he had collected from some of them, I do not know which.

Q. Do you know there was some compromise or settlement?

A. From what he told me.

By C. B. Kruttschnitt, for Alcus, Scherck, & Antey, and S. Friedlander, defendants:

Q. You stated that remittances were forwarded to De Lizardi & Co., amounting to £80,000, to cover drafts to the amount of £111,000?

A. Yes, sir.

108 Q. How were they expected to pay this difference between £80,000 and £111,000?

A. We did not expect De Lizardi & Co. to pay it before we remitted it to them.

Q. You expected to pay them at a subsequent date?

A. Yes, sir; according to the credits.

Q. You were in the habit of first drawing on De Lizardi & Co., and subsequently remitting to cover them?

A. Yes, sir; always sixty days after sight.

Q. The Crescent City Bank never had any money to the credit of De Lizardi & Co.; you always drew first and then remitted at a subsequent date?

A. Yes, sir; just as is done in all banks, by sixty-day drafts:

By M'r R. H. Marr, for B. I. West, defendant.

Q. Do these books, A & B, filed here, exhibit the actual dates of the transfers of stock?

A. Yes, sir; the two books, A & B, that I saw yesterday, that were offered in evidence.

Q. And the transfers were actually made as stated in those two books, A & B?

109 A. Yes, sir.

By M'r Monroe, for E. I. Hart and Sun Mutual Insurance Co., defendants:

Q. Can you ascertain by an examination of the books how much stock De Lizardi had in the bank at the time of the failure?

A. The stock-book is not here.

(Complainant excepts to so much of the testimony of this witness as goes to inquire into the state of the collections and the assets of the bank subsequent to the failure.)

Re-examined by M'r Beckwith, for complainant,

Q. I will call your attention to the transfer books A & B that were put in evidence yesterday, and to the form of the transfer of stock which is upon the transfer book, and carried as Crescent City Bank, and I desire you to state whether these two books A & B, are the transfer books of the Crescent City National Bank?

A. We continued the transfers of the Crescent City National Bank on the transfer book of the Crescent City Bank for enconomy's sake.

110 Q. Without getting new blanks or changing the books?

A. Yes, sir.

Q. Then all of the transfers shown on these two books A & B that have been made since the bank became a national bank were transfers of national-bank stock instead of the old Crescent City Bank?

A. Yes, sir; from the time that the bank was converted into a national bank on the 1st March, 1872.

(M. M. Cohen, solicitor for Crescent Mutual Insurance Co., and Jos. A. Shakespeare, objects to the above question, on the ground that the transfers must speak for themselves.)

Q. Will you state whether all of the transfers of the Crescent City National Bank stock were made in the book and with the blanks of the old Crescent City Bank?

A. Yes, sir.

Q. Did the president of the Crescent City National Bank keep any other book or record of the transfers?

A. No, sir.

(Signed) CHA'S FAURIE, J'R.

Subscribed & sworn before me this 30th December, 1875.

F. A. WOOLFLEY,
Special Examiner.

111 JOHN DAVIS, a witness produced, sworn, and examined on behalf of complainant, deposes & says:

By M'r Rouse for complainant:

Q. Were you employed in the Crescent City National Bank?

A. Yes, sir.

Q. For how long before its failure?

A. I was employed in the Crescent City Bank, and then in the Crescent City National Bank from the beginning of the bank as a national bank.

Q. Until its failure?

A. Yes, sir.

Q. What was your capacity in the Crescent City National Bank?

A. General book-keeper, note and exchange clerk.

Q. When did the Crescent City National Bank suspend payment of the checks of depositors?

A. March 14th, 1873.

Q. Had the bank met with any serious losses prior to that suspension?

A. No, sir.

Q. Had it not met with loss by the failure of De Lizardi & Co.?

112 A. It has met with loss with De Lizardi & Co. as a national bank.

Q. What amount of exchange drawn by the Crescent City National Bank on De Lizardi & Co. of London was outstanding at the time of De Lizardi & Co.'s failure?

A. £111,000.

Q. How much had the bank remitted to cover that?

A. £80,000.

Q. Do you know whether these remittances were lost to the bank or not?

A. Yes, sir.

Q. What was the effect upon the credit of the bank in the community on the knowledge of De Lizardi & Co.'s failure?

A. I believe that the deposits from that time will show it.

Q. What was it, if you know?

A. On the 13th of February the deposits were $506,000, and from that time they still decreased.

Q. Until the bank was obliged to suspend?

A. Until the bank was obliged to suspend.

Q. Was not the bank in bad financial credit in this community as soon as it was known that De Lizardi & Co. failed?

113 A. I could not say positively that it was in discredit, but then there was some talk about it, and some uneasiness.

Q. State whether or not the officers of the bank had a knowledge of its condition in the month of February, 1873.

A. I believe they had in the course of that month.

Q. And of its credit or discredit?

A. I could not very well say that, before the month of March. It was in the beginning of March.

Q. Were there not calls upon the bank for security by some of its creditors?

A. Yes, sir.

Q. Soon after the failure of De Lizardi & Co.?

A. Some days after.

Q. How long before the failure of the bank were these demands made for security?

A. I could not state exactly the date.

Q. Can you state about how long?

A. No, sir; my memory is not good.

Cross-examined by M'r M. M. Cohen for Crescent Mutual Insurance Company and Joseph A. Shakespeare, defendants.

114 Q. As to these calls for securities that have been inquired of by M'r Rouse, do you not know that in some instances other banks made advances and not the parties who received the securities? Who made the approach, or initiated the proceedings with regard to securities?

A. I believe our bank effected a loan of $40,000 from the Citizens' Bank. That is all I know without asking any further.

Q. I ask you who initiated that proceeding; whether it was the Citizens' Bank went to the Crescent City National Bank and effected that

loan, or whether or not the Crescent City National Bank did not seek the Citizens' Bank and apply for it?

A. I do not know.

Q. Did you not testify in case of Case, receiver, against the Citizens' Bank, of which I was the attorney?

A. Yes, sir.

Q. Were you not a witness in that case?

A. Yes, sir.

Q. You do not remember whether that question was mooted in the testimony of M'r Gaines and others?

A. I do not know.

115 By M'r D. S. Bryon, in p. p'a, defendant:

Q. You stated that this £80,000 remitted was all lost. Was not some part of it, £9,000, in transit?

A. Yes sir.

Q. Do you know whether or not that was saved to the creditors of the bank?

A. As yet, I believe, it is not.

Q. It is still——

A. In litigation.

Q. Do you know anything about the De Lizardis, where they are, either the one that was here or the one that was in London?

A. The one that was here before has been in the city two or three weeks ago. I saw him.

Q. Do you know where he is now?

A. I could not tell you, though I believe he is in New York, where he still goes whenever he comes back to the United States.

Q. Do you know anything about the brother that is in Mexico?

A. No, sir.

(Signed) JOHN DAVIS.

Subscribed and sworn before me December 30th, 1875.

(Signed) F. A. WOOLFLEY,
Special Examiner.

116 NEW ORLEANS, *Friday, December 31st*, 1875.

FRANK F. CASE, RECEIVER, &C., *vs.* HENRY ABRAHAM ET AL. } No. 7261.

Examination resumed, as per adjournment.

Appearances this day: J. D. Rouse and J. R. Beckwith, solicitors for complainant; E. B. Kruttschnitt, esqr., for Aleus, Scherck & Autey, and S. Friedlander, defendants; M. M. Cohen, esq., for Crescent Mutual Insurance Company, & J. A. Shakespeare; C. F. Buck and C. B. Baddecke, esq's, for Germania National Bank and others.

B. J. WEST, one of the defendants, a witness produced, sworn, and examined on behalf of complainant, deposes and says:

By M'r Rouse:

Q. Were you a stockholder in the Crescent City National of New Orleans?

A. Yes, sir.

Q. For how many shares of stock?

A. Fifty shares, I believe it was, or fifty-eight.

Q. And you had been a director in the bank also?

117 A. Not for a year before; not while it was a national bank. I ceased to be a director after it became a national bank.

Q. You have stated in your answer that you transferred that stock to one Vincent?

A. Yes, sir.

Q. Give the date of that transfer.

A. I gave it, as near as I could give it, in my answer. The date of the transfer, as I see by the book, was the 13th of March, 1873.

Q. Was the Crescent City National Bank in operation at the time the transfer was made?

A. Yes, sir; it was.

Q. Was there a certificate of stock issued to M'r Vincent?

A. I don't think there was. M'r Summers, the president, was absent when the transfer was made. I am not certain whether a certificate was issued or not; but I know he went to get it.

Q. What was the consideration of that transfer?

A. Ten dollars a share.

Q. How was it paid?

A. It was a balance of account, and a portion of it has not been paid yet.

Q. Do you expect to be paid the balance?

118 A. I fear that the proceeds of that and the value of other goods furnished him will be lost.

Q. Was not M'r Vincent at that time known to you to be insolvent?

A. No, sir.

Q. Did you not have reason to believe that he was insolvent?

A. No, sir; he was in receipt of $2,100 a year. He was a clerk.

Q. Who was he clerk for?

A. For me.

Q. What was the amount of consideration actually received?

A. I cannot say, because it was mixed up with other matters, and after the absolute failure of the bank he said he ought to be exonerated.

Q. Was there any understanding between you and him that he was not to be held liable for the value of the stock in case the bank failed?

A. No, sir. I proposed to him to sell, and he said he would purchase without any understanding.

Q. Did you not make the transfer with a design to avoid the liability imposed by the laws of the United States on shareholders of national banks?

A. No, sir. If you will allow me to explain, I will tell you

119 why. My knowledge of the condition of the bank was very indistinct. The president, a day or two before that, assured me positively that the bank could not lose by the De Lizardi & Co. failure beyond a certain amount, which would leave the stock about $50 or $60 a share; but other parties on the street told me it was worse; and not having any facts before me, and not knowing anything, I concluded it was best to sell.

Q. You anticipated the failure of the bank?

A. No, sir.

Q. And yet you were willing to sell?

A. Yes, sir; because it was one of these circumstances that I could not foresee.

Q. You had no suspicion it was going to fail?

A. No, sir; but a few days before that I had my account in the bank withdrawn.

Q. Did you withdraw it before the sale of the stock?

A. Yes, sir; on account of a misunderstanding with the bookkeeper. I had funds in the bank, and he had made a mistake in his account, he stating that I had not sufficient funds to meet a check. So I
120 went around and withdrew it.

Q. Was there any agreement in writing between you and Vincent about this transfer?

A. No, sir.

Q. Where is M'r Vincent now?

A. I think he is in Mississippi, near Natchez.

Q. How long after this transfer to him did he leave your employment?

A. I think it was probably six or eight months, maybe more than that.

Q. Were you indebted to him in any manner except for his services as your clerk at the time of this transfer?

A. No, sir.

Q. Had you paid him for his services up to the date of that transfer?

A. He always drew his salary when it was due.

Q. Has he drawn his salary since that date?

A. Whatever was due him he withdrew, according as it was due.

Q. Did you make him any payment for the month of March, 1873?

A. I think it very probable he withdrew every month what was coming to him.

Q. He was paid every month regularly?

121 A. He went to the bookkeeper and withdrew his salary whenever it was due. I presume he went to the bookkeeper and withdrew it.

Q. What business is he engaged in now?

A. Farming, I think.

Q. Had he any property, to your knowledge, at the time of this transfer?

A. I don't know; I knew nothing of his private affairs.

Q. What age was he?

A. I think thirty-five.

Q. Have you his address at present?

A. I have not.

Q. How long is it since you had communication with him?

A. Three or four months ago.

Q. Did you request payment of him for the amount of this stock?

A. Yes, sir; statements have been sent to him as to other debtors.

Q. For the payment of the stock?

A. For everything due.

Q. Have you brought any suit against him?

A. No, sir.

Q. What is his reply to these demands for payment?

122 A. He is simply unable to pay; he has been unfortunate in his business.

Q. Can you produce any of his answers in reply to these demands for payment of the purchase money for this stock?

A. No, sir.

Q. Do you not preserve all your letters as business men do?

A. Yes, sir; but he said nothing particular about the payment of that or the others. He owes me also for goods since.

Q. For goods furnished since he left your employment?

A. Yes, sir.

Q. And for nothing before that?
A. No, sir.
Q. Was the price of this stock ever charged against his salary on your books?
A. No, sir.
Q. Why not?
A. Well, it would have been, but the bank failed four or five days after the sale took place. I don't think he ever got his certificate, and he felt then as though he had not received the full value of what he bought.
Q. And you, acceding to his request, allowed him to draw his salary as usual?
123 A. Yes, sir.
No cross-examination.
(Signed) B. J. WEST.

Subscribed and sworn before me December 31st, 1875.
(Signed) F. A. WOOLFLEY,
Special Examiner.

THOMAS A. ADAMS, a witness sworn and examined on behalf of complainant, deposes & says:

By M'r Rouse:
Q. Are you acquainted with a man by the name of Morris Dyer?
A. Yes, sir.
Q. Will you state who he is, what his color is, and what is his employment?
A. He is a porter in the office of the Crescent Mutual Insurance Company, and black.
Q. Do you know whether he has any property?
A. No, sir; he or his wife own the house they live in, I am told.
Q. How long has he been a porter in the office of the Crescent Mutual Insurance Company?
A. Several years.
Q. Four or five?
A. Yes, sir.
124 (Signed) THO'S A. ADAMS.

Subscribed and sworn before me Dec. 31, 1875.
(Signed) F. A. WOOLFLEY,
Sp'c'l Examiner.

Agreement.

It is agreed by all the solicitors present that the time for taking testimony be extended thirty days from this date, Dec'r 31st, 1875.
After which the examination was adjourned to Monday, January 3rd, 1876, at three o'clock p. m.

NEW ORLEANS, *January 3d*, 1876.

FRANK F. CASE, RECEIVER, ETC., *vs.* HENRY ABRAHAM ET ALS. } No. 7261.

Examination resumed, as per adjournment.
Appearances this day: J. D. Rouse and J. R. Beckwith, esq'rs, solicitors for complainant; M. M. Cohen, esq'r, for Crescent Mutual Insur-

ance Company and J. A. Shakespeare; Cha's F. Buck, esq'r, for Germania National Bank; E. B. Kuttschuitt, esq'r, for Aleus, Scherck & Antey and Sam'l Friedlander, and other solicitors.

125 EDWARD C. PALMER, a witness produced, sworn, and examined on behalf of complainant, deposes and says:

By M'r Rouse, for complainant:

Q. What business are you engaged in?

A. A merchant.

Q. Are you also the president of a bank?

A. Yes, sir.

Q. You have been in business in New Orleans for how long?

A. Twelve years.

Q. Were you in a position to know the financial standing of other banks in 1873?

A. Yes, sir; some of them.

Q. Do you know what the credit and financial reputation of the Crescent City National Bank was in February, 1873?

A. Tell me what date in February; I want to refresh my memory.

Q. Say the middle or about the 20th of February.

A. Can you tell me the day that De Lizardi & Co. failed?

Q. The 13th, but it was not known here until the 16th.

A. On the day after the De Lizardi & Co.'s failure I knew that
126 the bank was insolvent.

Q. Very soon after the failure of De Lizardi & Co., did you have intelligence of the fact?

A. The next day.

Q. Were you a holder or did you purchase exchange drawn by the Crescent City National Bank upon De Lizardi & Co.?

A. I had £10,000, of which I am out of pocket yet.

Q. After the failure of De Lizardi & Co., what was the financial standing of the Crescent City National Bank?

A. Gone.

Q. What was the general impression in the community?

A. That they were irretrievably ruined.

Q. When did this discredit of the bank first appear in financial circles?

A. The day the news came of the failure of De Lizardi & Co., which was on Friday—I think it was on the 16th of February—but I cannot tell you exactly the date; it was on Friday, I remember very well the day.

Cross-examination by John H. New, solicitor for H. O. Seixas and Pritchard & Bickham, and C. M. Soria.

Q. You do not know what date it was De Lizardi & Co. failed?

127 A. I do not from memory, but I can refresh my memory by the testimony which I gave before, when I looked up the whole matter.

Q. You being the president of a bank and dealing in exchange, of course kept better informed than other persons?

A. Yes, sir.

Q. It was your business?

By M'r M. M. Cohen, for Crescent Mutual Insurance Company and Jos. A. Shakespeare.

Q. How long after the failure of De Lizardi & Co. did the bank do any business?

A. I cannot answer that question; not from memory.

Q. Supposing that the failure took place on the 13th of February, and it was known here on the 14th February, taking that for granted, how long after the 14th February was it before the bank ceased to do any business?

A. That I cannot tell you from memory.

Q. Do you know whether or not it was a week?

A. I do not know. I think it was a week; I am not sure about
128 that; possibly more than a week.

(Signed) EDWARD C. PALMER.

Subscribed & sworn before me January 3rd, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

The examination was here adjourned to January 5th, 1876, at three o'clock p. m.

NEW ORLEANS, *Friday, January 7th*, 1876.

FRANK F. CASE, RECEIVER, ETC., *vs.* HENRY ABRAHAM ET AL. } No. 7261.

Testimony resumed, as per adjournment.

Appearances this day: J. D. Rouse and J. R. Beckwith, esq's, solicitors for complainant; E. B. Kruttschnitt, esq., for Aleus, Scherck & Autey, and Sam'l Friedlander, and other solicitors.

COHEN M. SORIA, one of the defendants, a witness produced, sworn, and examined on behalf of the complainant, deposes and says:

By Mr. Rouse, for complainant:

Q. Were you a director in the Crescent City National Bank?

129 A. I was.

Q. For how long?

A. I could not give you the exact time. I think two or three years; two years at least.

Q. Did you so continue until the failure of the bank?

Q. Had you any stock in the bank?

A. I had.

Q. How much?

A. I had fifty-six shares of my own stock.

Q. Did you have some other stock standing in your name?

A. Yes, sir; one hundred shares.

Q. You had one hundred and fifty-six shares of stock standing on the books of the bank in your name?

A. Yes, sir.

Q. You transferred that stock about the time of the failure?

A. I transferred some of it previous to the failure; all of it was transferred previous to the failure.

Q. To whom did you transfer it?

A. I transferred fifty-six shares to a M'r McCaughan.

Q. What was M'r McCaughan's business?

A. He was part of the time with me—he was my brother-in-law—and part of the time he was on his own account.

130 Q. What kind of business was he engaged in at that time?

A. He was engaged then in Mississippi; he was not with me.

Q. What consideration did he pay you at the time for the transfer of this stock?

A. Not a cent.

Q. What business was he in at the time of this transfer?

A. I could not exactly tell what business he was in; he is sometime farming and sometime boating. The young man has some property.

Q. Had he any property at that time?

A. Yes, sir.

Q. Where was it situated?

A. On the sea-shore between Pass Christian, Mississippi City, and Biloxi. He has some property there now, I believe.

Q. How long before the suspension of the payments of its checks by the Crescent City National Bank did you make this transfer to M'r Caughan?

A. The first transfer I made was on the 8th of March, and I think the payment the bank checks was suspended about the 14th.

131 Q. You knew, I suppose, as a director of the bank, that the bank had been severely crippled by the failure of De Lizardi & Co., of London?

A. I did, sir.

Q. You say you had no agreement with M'r Coughan about the transfer of this stock?

A. I had no agreement with him at all, positively.

Q. You had no conference with him before the transfer?

A. No, sir.

Q. Have you any knowledge of the transfer of any of this stock by McCaughan to Mummy, Schroeder & Co.?

A. Yes, sir; I employed a broker to sell fifty-six shares of stock for me or M'r McCaughan, as the case might be.

Q. And the stock was actually sold?

A. Yes, sir; the stock was actually sold by M'r Bienvenue, the broker, to Mummy, Schroeder & Co. for about $37 a share, and it was transferred to them on the 10th of March.

Q. And they are still the owners of it?

A. Yes, sir; the fifty-six shares.

Cross-examined by M'r New, the solicitor for witness:

132 Q. You say there were one hundred and fifty-six shares of stock standing in your name on the books of the bank, and of that number fifty-six shares were your own?

A. Yes, sir.

Q. Who owned the other one hundred shares?

A. The other one hundred shares belonged to the bank. I held them in my name simply in trust.

Q. Explain the circumstances under which it came that these one hundred shares were put in your name, and how they were the property of the bank.

A. In making up the capital stock of the bank M'r Summers, the president, stated that when he was in Washington the Comptroller of the Currency told him that if he would make the capital stock of his bank $500,000 instead of $400,000 he would have a much better bank; that he had known of such cases, and would advise him to get the directors of his bank together, and, if he could, to get his stock subscribed to that amount; that he had known cases where the directors had taken

such stock, it being held for the benefit of the bank. That was told by M'r Summers in caucus among the directors.

133 Q. On that statement, then, you consented that one hundred shares should stand in your name?

A. Yes, sir; with others.

Q. Did you pay for them?

A. I never did.

Q. Did you ever give your notes?

A. Yes, sir; I did.

Q. Were these notes paid?

A. No, sir; they were not paid.

Q. Did you make any part payment on them?

A. I made a part payment at one time after the suspension of the bank. I did that because I was doing business and was anxious of keeping my credit up, and fearful of a lawsuit at the time. I paid $400 on them to keep my paper from being sued on, thereby ruining my credit and injuring my business.

Q. It was not in acknowledgment of the same being due?

A. No, sir; I stated to M'r Case the circumstances of the case, and that the stock was not mine.

Q. Did you ever take any dividends on that one hundred shares of stock?

A. No, sir; they were turned over to the bank.

Q. There were dividends declared?

134 A. Yes, sir; and turned over to the bank.

Q. Why was it that you transferred this stock?

I transferred this stock at the time of the panic. I did not know what to do. I had but very little; my means were limited and I was satisfied that the bank would fail; that if De Lizardi & Co. paid nothing the bank was gone. I was satisfied of that, and in a moment of panic I transferred it to get it out of my hands and to relieve myself of stock that did not belong to me.

Q. You never exercised any active ownership over that stock?

A. I never did; I never had the certificate of it; one was issued, but I did not take it. I did not wish the certificate.

Q. M'r McCaughan never paid you for that stock?

A. No, sir.

Q. You have never seen him since?

A. No, sir.

Q. You did it, then, without any assumption of ownership and to relieve yourself of the liability?

A. Yes, sir.

Q. You have never seen him since upon the subject?

135 A. I never spoke to him upon the subject.

Q. He is your brother-in-law?

A. Yes, sir.

Q. The fifty-six shares that you owned were sold to Mummy Shroeder & Co.?

A. Yes, sir; and I could have sold the whole of it—the one hundred and fifty-six shares.

Q. If you had owned the hundred shares, could you have sold them?

A. Yes, sir. M'r Bienvenue came and wanted the whole of it.

Q. Could you have gotten the same amount for a large quantity as you did for the small?

A. Yes, sir; $37. I think that was the amount, if not more.

Q. But it was at least $37?

A. Close in that neighborhood. I got the check of Mummy Schroeder & Co. They aske' the broker to whom they were todraw the check and he told them not to draw it to him but to C. M. Soria.

Q. You could have sold the whole, if you were the owner of that stock, with the same facility as you did the fifty-six shares?

A. Yes, sir; the broker came to me, and I told him the stock was not belonging to me. Then I had time to reflect upon the matter,

136 but I could not undo it.

Q. You never paid anything further on these notes?

A. Except the $400.

Q. And you paid that as a compromise?

A. Yes, sir.

Q. You declined all responsibility?

A. I told M'r Case at this time that I declined the responsibility and told him the circumstances of the case.

Re-examined by M'r Rouse, for complainant:

Q. Will you explain what you stated was a compromise of your notes for $10,000?

A. M'r Case was pressing me at the time for a settlement, threat'ning to bring suit; that he could not wait, and that he would sue me upon the notes, and I knew of no other way to do than to try and settle with him in some way to relieve myself. So I told him at the time that I would pay him $400 a month, and explained to him at the same time that these notes were held by the bank without any consideration; that I never got a cent for them.

Q. But you were to pay $400 a month in extinguishment of them?

A. Yes, sir.

137 Q. And you never paid but one $400 for one month?

A. No, sir; from the simple fact that I have not been able. I had not money since to do it.

(Signed) C. M. SORIA.

Subscribed and sworn before me, January 7th, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

The examination was here adjourned to Monday, January 10th, 1876, at three o'clock p. m.

NEW ORLEANS, *Monday, January 10th*, 1876.

FRANK F. CASE, RECEIVER, ETC., *vs.* HENRY ABRAHAM ET AL. } No. 7261.

This day at the appointed time, three o'clock p. m., as per adjournment, there appeared J. D. Rouse, esq'r, solicitor for complainant, and E. B. Kruttschuitt, esq., solicitor for Alcus, Scherck & Autey, and Samuel Friedlander, defendants, and no other appearances being entered the examination was adjourned to Tuesday, January 11th, 1876, at three o'clock p. m.

TUESDAY, *January 11th*, 1876.

FRANK F. CASE, RECEIVER, &C., *vs.* HENRY ABRAHAM ET ALS. } No. 7261.

138 This day Mess'rs Rouse and Beckwith, esq'rs, solicitors for com-

plainants, and Cha's F. Buck, esq., solicitor for the Germania National Bank, defendants, having appeared, and there being no witnesses in attendance, the meeting adjourned to Wednesday the 12th instant at three o'clock p. m.

And on Wednesday, January 12th, 1876, at the appointed hour, three o'clock p. m., J. D. Rouse and J. R. Beckwith, solicitors for complainants, and Percy Roberts, esq., solicitor for McNeeley & Millburn, and Emory Clapp et als., defendants, having appeared, said solicitors for complainants, Mess'rs Rouse & Beckwith, formally, rested their case, and the meeting was adjourned to Friday, January 14th, 1876, at 3 p. m., at which time the evidence on behalf of defendants will be heard and taken.

NEW ORLEANS, *February 7th*, 1876.

Examination on behalf of complainant in rebuttal.

Present: J. D. Rouse for complainant; E. B. Kruttschnitt for Aleus Scherck & Autey, and S. Freidlander, defendants.

FRANK F. CASE, receiver of the Crescent City National Bank, recalled by the complainant, rebutting, deposes and says:

139 Before proceeding with the examination, M'r Case desired to, and did, explain his testimony heretofore given, in this: When he said that Myer Weiss & Company, R. A. Curd & Co., and the Hibernian National Bank, of New Orleans, held collaterals of pledges to secure exchange purchased or held by them, he should have said that the Citizens' Bank obtained collaterals to secure it in taking up the exchange held by those parties, and which was taken up for their benefit and protection, and that the claim against said parties is for the restoration of such collaterals so applied whereby they as creditors of said bank were preferred.

By M'r Rouse:

Question. Have any collections been made from stockholders of the Crescent City National Bank of the assessment of seventy per cent. (70 %) of their shares?

Answer. There has been from twelve to fifteen thousand dollars collected.

Q. How much of such collections entered into the dividend of ten per cent. (10 %) which has been paid recently?

A. About twelve thousand dollars went into the last dividend of ten (10%) per cent.

140 Q. Did any of the stockholders from whom such collections were made make voluntary payment thereof?

A. Some stockholders did pay voluntarily without suit being brought against them.

Q. Are there any other suits pending elsewhere against stockholders?

A. There is a suit pending in New York against several stockholders. Proceedings have been taken tending to enforce the liability of other stockholders residing in the city of Mexico, the particulars of which cannot be stated.

Q. Do you know whether any of the stockholders of the Crescent City National Bank are insolvent, or apparently insolvent, so that legal proceedings to enforce their liabilities as such would prove unavailing?

A. There is quite a large number of them in that condition.

F. de Lizardi & Co., of London, hold eighty-nine (89) shares; M. A.

de Lizardi & Co., of New Orleans, were owners of two hundred and seventy (270) shares; M. A. de Lizardi was the owner of five hundred and twenty-six (526) shares; E. H. Summers, president of the bank, was the owner of five hundred & nineteen $\frac{2}{5}$ ($519\frac{2}{5}$) shares—all of whom are insolvent, and a suit against them would entail expenses without
141 reasonable prospect of reimbursement of such expenses. And there are other stockholders holding a small number of shares, their names not remembered now, who are in a like insolvent condition.

No cross-examination.

(Signed) F. F. CASE.

Subscribed and sworn before me, February 7th, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

Complainant now closes the testimony.

UNITED STATES OF AMERICA,
District of Louisiana, ss:

I, Francis A. Woolfley, special examiner, duly appointed by the circuit court of the United States for the district of Louisiana to take the testimony of Cha's Faurie, j'r, Frank F. Case, John Davis, William I. Behan, B. J. West, Thomas A. Adams, Alfred Marchand, Selim Barnett, Jacob Katz, Edward Lubie, S. Katz, George W. Hynson, F. B. Leefe, N. O. Hynson, Edward C. Palmer, Livingston H. Gardner, Louis Morel, Peter H. Keenan, Abraham Levi, J. K. Small, and Cohen M. Soria, witnesses on the part of the complainant, do hereby certify that on the days named in the depositions hereto annexed I was
142 attended at the office of the clerk of the said circuit court, in the city of New Orleans, by the counsel and witnesses aforesaid; that the witnesses were duly sworn and examined, and the depositions were reduced to writing and read to the witnesses, and by them subscribed in my presence, except Abraham Levi, because he was about to settle, or had settled, this suit as to him, and therefore declined to sign his deposition.

And I further certify that exhibits A, B, C, D, E, F, A^2, B^2, I, K, L, and M, were introduced in evidence in said cause during the taking of said depositions.

New Orleans, March 31st, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

Exhibit A offered in evidence by complainant, December 29th, 1875.

United States circuit court, district of Louisiana.

FRANK F. CASE, RECEIVER OF THE CRESCENT CITY NATIONAL BANK, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

ARTICLES OF ASSOCIATION OF THE CRESCENT CITY NATIONAL BANK OF NEW ORLEANS.

143 We, the undersigned, the directors of the Crescent City Bank, in the State of Louisiana, having been authorized by the owners

of two thirds of the capital stock of said bank to change and convert the said bank into a national banking association, under and according to the provisions of the act of Congress, entitled "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June third, 1864, and to execute articles of association, do hereby, in our own behalf, and in behalf of the stockholders whom we represent, make and execute the following articles of association :

ARTICLE FIRST. The name and title of the association into which the Crescent City Bank is to be changed and converted, shall be The Crescent City National Bank of New Orleans. "The Crescent City National Bank of New Orleans" being converted from a State bank into a national, under the acts of Congress, takes charge of all the assets and assumes all the liabilities of the late Crescent City Bank, with the rights to sue and be sued in the name of "The Crescent City National Bank of New Orleans."

ARTICLE SECOND. The place where its banking house or office
144 shall be located, and its operations of discount and deposit carried on and its general business conducted, shall be in the city of New Orleans, in the parish of Orleans, and State of Louisiana.

ARTICLE THIRD. The object of the association is to carry on the business of banking, by receiving deposits, buying and selling gold and silver bullion and bills of exchange, loaning money on personal security, discounting bills, notes, and other evidences of debt, and generally to exercise such incidental powers and privileges as are now or may hereafter be conferred on them by law.

ARTICLE FOURTH. The board of directors shall consist of seven stockholders, each of whom shall own at least fifty shares of the capital stock of said bank. The regular annual election of directors shall be held on the fourth Tuesday of January of each year, but if no election shall be held on that day it may be held on any other day, according to the provisions of the tenth section of the act of Congress above mentioned; and all elections shall be held according to such regulations as
145 may be prescribed by the board of directors of the association, not inconsistent with the provisions of the aforesaid act.

ARTICLE FIFTH. The capital stock of the association shall be five hundred thousand dollars, to be divided into shares of one hundred dollars each, but the capital may be increased, according to the provisions of the thirteenth section of said act, to any sum not exceeding one million dollars; and in case of the increase of the capital of the association, each stockholder shall have the privilege of subscribing for such number of shares of the proposed increase of the capital stock as he may be entitled to according to the number of shares owned by him before the stock is increased.

ARTICLE SIXTH. The board of directors, four of whom shall be a quorum to do business, shall elect one of their number to be president of the association, who shall hold his office (unless he shall become disqualified or be sooner removed by a two-thirds vote of all the members of the board) for the term for which he was elected a director, and they shall have power to elect a vice-president, who shall also be a member
of the board of directors, and to elect or appoint a cashier, and
146 such other officers and clerks as may be required to transact the business of the association; to fix the salaries to be paid to them and to continue them in office, or to dismiss them, as in the opinion of a majority of the board, the interest of the association may demand. They shall also have power to define the duties of the officers and clerks

of the association, to require bonds from them, and to fix the penalty thereof; to regulate the manner in which elections of directors shall be held, and to appoint judges of the elections; to provide for an increase of the capital of the association, and to regulate the manner in which such increase shall be made, and generally to do and perform all the acts that it may be legal for a board of directors to do under the act aforesaid; and they shall also have the power to make all by-laws that it may be proper and convenient for them to make under said act for the general regulation of the business of the association and the entire management and administration of its affairs; which by-laws may prohibit, if the directors shall so determine, the transfer of stock owned by any stockholder who may be liable to this association either as principal debtor or otherwise, without the consent of the board.

ARTICLE SEVENTH. This association shall continue for the pe-
147 riod of twenty years from the date of the organization certificate, unless sooner dissolved by the act of its stockholders owning at least two-thirds of its stock, who may dissolve and close up the association in such manner as they may deem to be for the interest of the stockholders and creditors of the association, but subject to the restrictions, requirements, and provisions of the said act of Congress of June third, 1864, aforesaid.

ARTICLE EIGHTH. These articles of association may be changed or amended at any time by stockholders owning a majority of the stock of the association, in any manner not inconsistent with the provisions of the act of Congress herein above referred to; and the board of directors or any three stockholders may call a meeting of the stockholders for the purpose of considering such amendments.

In witness whereof, we, the directors aforesaid, for ourselves as such directors, and in behalf of the stockholders of the Crescent City Bank, have hereunto set our hands, this twenty-first day of December, in the year of our Lord one thousand eight hundred and seventy-one. (Two words erased, null & void, in article third.)

	(Signed)	E. H. SUMMERS.
	(Signed)	L. H. GARDNER.
148	(Signed)	C. M. SORIA.
	"	M. A. DE LIZARDI.
	"	E. NEWMAN.
	"	GEORGE W. HYNSON.
	"	ANDREW STEWARD.
	"	RICH'D FLOWER.

On this twenty-first day of December, eighteen hundred and seventy-one, personally came and appeared before me, Edward Barrett, a notary public in and for the parish of Orleans, city of New Orleans, and State of Louisiana, Messieurs E. H. Summers, L. H. Gardner, C. M. Soria, M. A. de Lizardi, E. Newman, George W. Hynson, Andrew Stewart, and Richard Flower, directors of the Crescent City Bank of New Orleans, to me well known, who severally acknowledged that they executed the foregoing articles of association for the purposes therein mentioned.

Witness my hand and seal of office, the day, month and year aforesaid.

[SEAL.] EDW'D BARRETT, *Not. Pub.*

[Four 5 cent internal-revenue stamps, canceled.]

I certify that the articles of association of "The Crescent City Na-

tional Bank of New Orleans" were executed in duplicate, and that one of the instruments so executed is the foregoing, and that the other, in all respects like the foregoing, and stamped in the same manner, is on file with said bank.

New Orleans, December 21st, 1871.

(Signed) E. H. SUMMERS, *Pres't.*

[5 cent int. rev. stamp canc'd].

149 *Exhibit B, offered in evidence by complainant, December 29th*, 1875.

United States circuit court, district of Louisiana.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER O F THE CURRENCY,
Washington, February 15th, 1872.

Whereas, by satisfactory evidence presented to the undersigned, it has been made to appear that The Crescent City National Bank of New Orleans, in the city of New Orleans, in the parish of Orleans, and State of Louisiana, has been duly organized under and according to the requirements of the act of Congress, entitled "An act to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof," approved June 3rd, 1863, and has complied with all the provisions of said act, required to be complied with before commencing the business of banking under said act.

Now, therefore, I, Hiland R. Hubbard, comptroller of the cur-
150 rency, do hereby certify that The Crescent City National Bank of New Orleans, in the city of New Orleans, in the parish of Orleans and State of Louisiana, is authorized to commence the business of banking under the act aforesaid.

In testimony whereof, witness my hand and seal of office, this 15th day of February, 1872.

[SEAL.] (Signed) HILAND R. HURBARD,
Comptroller of Currency.

No 1937. Treasury Department.

Exhibit C, offered in evidence by complainant, December 29th, 1875.

United States circuit court, district of Louisiana.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

TREASURY DEPARTMENT,
OFFICE OF THE COMP'R OF CURRENCY,
Washington, D. C., March 18th, 1873.

Notice having been received by me that the Crescent City National Bank of New Orleans, a national banking association formed pursu-

ant to the laws of the United States, and located in the city of
151 New Orleans, State of Louisiana, had failed to redeem its circulating notes when payment thereof was legally demanded at the office of said association, and being satisfied from the report of a special agent, appointed as provided in section 47 of the national currency act, that the said association has failed to redeem in lawful money of the United States its circulating notes when payment thereof was legally demanded, during the usual hours of business at the office of said association, and is in default.

Now, therefore, I, John Jay Knox, Comptroller of the Currency, in pursuance of the power and authority vested in me by law, do hereby appoint Charles Case, of the city of New Orleans, in the State of Louisiana, receiver for "the Crescent City National Bank of New Orleans," with all the powers, duties, and responsibilities given to or imposed upon a receiver under the provisions of the act entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864.

In witness whereof I have hereto subscribed my name and
152 have caused my seal of office to be affixed to these presents at the city of Washington, in the District of Columbia, the day and year first above written.

[SEAL.] (Signed) JOHN JAY KNOX,
Comptroller of the Currency.

Exhibit D, offered in evidence by complainant. December 29th, 1875.

United States circuit court, district of Louisiana.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

TREASURY DEPARTMENT, OFFICE COMP'R CURRENCY,
July 8th, 1874.

Whereas Charles Case was duly appointed and commissioned receiver of "the Crescent City National Bank of New Orleans," in the State of of Louisiana, on the 18th day of March, 1873, and whereas said Charles Case proposes to resign his commission as receiver of said bank, leaving the said receivership vacant:

Now, therefore, be it known, that I, John Jay Knox, Comptrol-
153 ler of the Currency, do hereby appoint Frank F. Case to be receiver of the Crescent City National Bank of New Orleans, to take effect upon the resignation of said Charles Case, with all the powers, duties, and responsibilities given to or imposed upon a receiver, under the provisions of the act entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3rd, 1864.

In witness whereof I have hereunto subscribed my name and have caused my seal of office to be affixed to these presents at the city of Washington, in the District of Columbia, the day and year first above written.

[SEAL.] (Signed) JOHN JAY KNOX,
Comptroller of the Currency.

Exhibit E, offered in evidence by complainant December 29th, 1875.

United States circuit court, district of Louisiana.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

154 TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
Washington, July 23d, 1874.

SIR: Having ascertained and determined that the assets of "the Crescent City National Bank of New Orleans" are insufficient to discharge the legal debts and liabilities thereof, and that in order to discharge the same it is necessary to enforce the personal liability of the individual stockholders owning shares of stock in the said bank at the date of its suspension, so far as the same can be done by legal proceedings, I have also determined that the deficiency in said assets equals or exceeds seventy per centum of the capital stock of said bank.

You are therefore hereby directed at once to institute such legal proceedings in the proper court as may be necessary to enforce against each and every stockholder of said bank, owning any stock thereof or any interest therein at the time of the suspension of said bank, his or her personal liability as such stockholder, in accordance with the 12th section of the act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to pro-
155 vide for the circulation and redemption thereof," approved June 3d, 1864, to compel a present contribution from said stockholders of seventy per centum of the par value of the shares held or owned by them, or wherein they had any interest, the same to be subject to further contributions, to be enforced from time to time if the same shall be found to be necessary to pay the debts of said bank.

This order must be held to extend to all cases save those where, because of bankruptcy or apparent insolvency, such legal proceedings would be of no avail.

In testimony whereof I have hereto affixed the official seal of this office upon the day and year above mentioned.

[SEAL.] (Signed) JOHN JAY KNOX,
Comptroller.

F. F. CASE,
Rec'r Crescent City National Bank of New Orleans, La.

Exhibit F, offered in evidence by complainant December 29th, 1875.

U. S. cir. c't, dist. of La.

F. F. CASE, REC'R CRESCENT CITY NAT'L BANK,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

156 STATE OF LOUISIANA,
Parish of Orleans:

By this public instrument of protest, be it known that on this seventeenth day of March, in the year one thousand eight hundred and seventy-

three, at the request of Frank F. Case, of this city, a holder of circulating notes of the Crescent City National Bank of New Orleans, a banking association of this city, organized under the provisions of the national currency act, to the amount of thirteen hundred and ten dollars of the following denominations, viz: Three one-hundred-dollar bills, numbered, respectively, 307965, 308012, 308092; two fifty-dollar bills, numbered, respectively, 307762, 307818; six twenty-dollar bills, numbered, respectively, A 711255, 712303, 712943, 771990, 712998, and 713029; twenty-four ten-dollar bills, numbered, respectively, A 710507, 710643, 710637, 710737, 710900, 711035, 711131, 71057, 711234, 711274, 711281, 711322, 711398, 711770, 711962, 711992, 712196, 712445, 712607, 712694, 712981, 712995, 713104, and 713145; and one hundred and ten five-dollar bills, numbered, respectively, H 916937, 917063, 917084, 917105, 917234, 917247, 917474, 917498, 917587, 917644, 917690, 917705,
917771, 926848, 926971, 927144, 927221, 927366, 927498, 927514,
157 927518, 927730, 927805, 927808, 927845, 927984, 928295, 928330,
92861, 936431, 936945, 959767, 959797, 959962, 960049, 960087, 960214, 960308, 960337, 960338, 960459, 960605, 960683, 960671, 960736, 960824, 960895, 960915, 961003, 961181, 961443, 961541, 961588, 973342, 973422, 973489, 973506, 973618, 973622, 973667, 973771, 973892, 973945, 974031, 974128, 974141, 984802, 984903, 984936, 984969, 984997, 985098, 9852016, 985204, 985221, 985265, 985274, 985298, 985341, 994446, 994466, 994529, 994515, 994551, 994996, 995052, 995083, 995103, 995213, 995264, 995270, 995293, and 9 , (or 2798 bank No.), and K, Nos. 8492, 8504, 8542, 8612, 8638, 8655, 8691, 8764, 8897, 8910, 8923, 9023, 9069, 9143, 9150, 9203, and 9317, I, Andrew Hero, jr., a notary public in and for the parish of Orleans, State of Louisiana aforesaid, duly commissioned and qualified, presented said thirteen hundred and ten dollars of circulating notes of said Crescent City National Bank of New Orleans, in one package, to the paying teller of the Crescent City National Bank of New Orleans, at its banking house or office in this city, during the usual hours of business, in the presence of the president and cashier of said
bank, and demanded the payment or redemption of said notes in
158 lawful money of the United States, and was by said paying teller
answered that the same could not be so paid or redeemed, for want of a sufficient quantity of lawful money of the United States:

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, against all whom it doth or may concern, for all damages, costs, expenses, charges, and interest suffered or to be suffered for want of payment or redemption by said Crescent City National Bank of New Orleans of the aforesaid thirteen hundred and ten dollars of its circulating notes.

Thus done and protested in duplicate, in the presence of Mess'rs George Cenas and Paul A. Conrad, both of this city, witnesses, who have signed with me, the notary.

(Signed) ANDREW HERO, J'R,
Not. Pub.

(Signed) GEO. CENAS,
" P. A. CONRAD.

The above and foregoing is a true and correct copy of the original instrument of protest extant in my notarial records of protest.

New Orleans, Dec'r 29th, 1875.

[SEAL] ANDREW HERO, J'R,
Not. Pub.

150 *Exhibit I, offered in evidence by complainant December 29th, 1875.*

U. S. circuit court, district of Louisiana.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

CHARTER OF THE CRESCENT CITY BANK OF NEW ORLEANS.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Be it known that this day, before me, Walter Hicks Peters, a notary public, in & for the parish of Orleans & city of New Orleans, State of Louisiana aforesaid, duly commissioned & qualified, and in the presence of the hereinafter named and subscribing witnesses, personally came & appeared the persons hereinafter named & undersigned, who severally declared, that, under the provisions & by authority of an act of the legislature of this State, entitled "An act to establish a general system of free banking in the State of Louisiana," approved on the fif-
160 teenth day of March, one thousand eight hundred & fifty-five, they do by these presents form themselves into a corporation, and to that end they make and agree to the following

Articles of association:

ARTICLE FIRST. The corporate name of the association shall be the Crescent City Bank.

ARTICLE SECOND. The same shall be located, & its legal domicil is fixed in the city of New Orleans.

ARTICLE THIRD. The object of the association is to carry on the business of banking, by receiving deposits, buying & selling gold & silver bullion & bills of exchange, loaning money on real & personal security, discounting bills, notes, and other evidences of debt, & generally to exercise such incidental powers & privileges as are now or may hereafter be conferred on them by law.

ARTICLE FOURTH. The capital stock of said association is hereby fixed at the sum of one million thirty-two thousand eight hundred dollars, subject to be increased in the manner prescribed by law, represented by ten thousand three hundred and twenty-eight shares
161 of one hundred dollars each, five per cent. of which shall be payable in cash at the time of subscribing to these articles, fifteen per cent. on the first of October next, & the remaining eighty per cent. in monthly instalments of twenty per cent., payable respectively on the first days of November, December, January, & February next.

Should any subscriber refuse or neglect to pay punctually his, her, or their instalment or instalments as the same mature & fall due, interest thereon at the rate of eight per cent. per annum shall be added thereto from maturity till payment; and if any subscriber or subscribers neglect or refuse to pay his, her, or their instalment or instalments within thirty days after the specified time of payment, the board of directors reserve to themselves the right of causing any share or shares upon which any instalment may be due to be sold at public auction, or otherwise, after ten days' previous notice thereof by advertisement.

ARTICLE FIFTH. This association or corporation shall commence business operations on the first day of October next, eighteen hun-
162 dred and fifty-seven, and terminate & cease on the thirtieth day of September, eighteen hundred and seventy-seven.

ARTICLE SIXTH. The device of the association shall be a crescent, with a pelican feeding her young, the words "Crescent City Bank" encircling it.

ARTICLE SEVENTH. The names of the shareholders, their residences & the number of shares held respectively each, are declared at present to be as follows, subject to such transfers as may hereafter be made on the books of the association:

Names.	Residence.	No. of shares.
Lewis & Oglesby	New Orleans	20 shares.
Carroll, Pritchard & Co	do	100 "
J. J. Person & Co	do	50 "
J. J. Person	do	250 "
W. A. Broadwell	do	100 "
Fellowes & Co	do	225 "
Dan'l W. Adams	do	50 "
W'm F. Smith	do	25 "
F. Titus	Memphis, Tenn.	70 "
W. A. Johnson & Co	New Orleans	150 "
Pilcher, Goodrich & Co	do	150 "
F. B. Ernest	do	25 "
N. B. Keene	do	20 "
Gregor & Wilson	do	20 "
John L. Lee	do	25 "
M. Harris	do	50 "
Jesse R. Jones	do	10 "
163 Shelby, Seymour & Co	New Orleans	20 shares.
Corson & Armstrong	do	20 "
J. J. Warren	do	50 "
J. L. Johnson & Co	do	50 "
Pope, Ellison & Co	do	50 "
Davis, Jenkins & Co	do	50 "
Patton & Smith	do	10 "
A. Levi	do	50 "
A. F. Jones	do	50 "
Forcheimer & Mayer	do	25 "
D. Williams & Sons	do	25 "
M. C. Edwards	do	50 "
Frank Williams	do	50 "
Charles W. Phillips	do	25 "
Freidlander & Gerson	do	50 "
Sam'l Freidlander	do	25 "
R. W. Esthin & Co	do	50 "
T. C. Holmes	do	50 "
James H. Dudley	do	110 "
J. O. Nixon	do	50 "
M'r's A. C. Peune	do	25 "
W'm T. Palfrey	Pa. S't Mary, La	50 "
E. Banksmith & Co	New Orleans	50 "
C. H. Chase	do	50 "
Wolf & Brother	do	15 "
Paul Tricon	do	10 "
Henry Tricon	do	5 "
M'r's Mary H. Hyman	do	30 "
M'r's Harriet J. Sumner	do	10 "
Tom S. McCay	do	50 "
164 Townsend, Tompkins & Co	New Orleans	75 shares.
Feo Sambola, j'r	do	25 "
Warneken & Kerchoff	do	50 "
G. W. Shaw & Co	do	25 "

	Names.	Residence.	No. of shares.
	A. Poincy	do	20 "
	C. Schneider	do	25 "
	Palfry & Co	do	50 "
	Grellsen, Stevenson & Co	do	50 "
	Cleveland Bro's & Co	do	50 "
	Goldsmith & Haber	do	50 "
	J. R. Macmurde	do	25 "
	Tho's Murray	do	30 "
	G. A. Pochet	do	10 "
	Thomas Rogers, j'r	do	10 "
	S. V. Phelps	do	5 "
	E. C. Whitehead	do	2 "
	Elijah Peale	do	25 "
	A. B. Cammack	do	20 "
	Geo. W. Parker	do	50 "
	Brown, Johnston & Co	do	50 "
	R. McIlhenny	do	100 "
	Martin, Owen & Cobb	do	100 "
	Baxter, Lovell & Co	do	20 "
	L. Bassett & Co	do	20 "
	J. J. Albert	do	10 "
	J. L. Bach & Co	do	20 "
	A. B. James	do	100 "
	W'm Gregory	do	5 "
	Macgregor, Alloway & Co	do	50 "
165	John Haskins	New Orleans	100 shares.
	H. Mengens	do	10 "
	Cha's R. Bailey & Co	do	10 "
	Ads. Hamilton	do	50 "
	Wilson, Pomeroy & Co	do	50 "
	Hennings, Muller & Gosling	do	50 "
	Steiner & Marinoni	do	25 "
	Puig, Meig & Co	do	40 "
	Cha's B. Singleton	do	10 "
	A. Seignouret	do	50 "
	S. W. Wingfield	do	10 "
	Hughes, Hyllested & Co	do	50 "
	C. Tiblier	do	25 "
	S. Schmidt	do	25 "
	Duntz Bro's	do	25 "
	J. G. Peppard & Co	do	10 "
	Calvin Tato & Co	do	10 "
	S. O. Nelson & Co	do	25 "
	Fred. B. Brand	do	50 "
	Ja's A. Turner	do	25 "
	Robert Mott	do	40 "
	Th. Capitaine	do	10 "
	Rob't L. Adams & Co	do	50 "
	Ar. Miltenberger & Co	do	50 "
	Sybrandt & Co	do	50 "
	Schmidt & Zeigler	do	25 "
	Hewitt, Norton & Co	do	100 "
	José Barba	do	10 "
	John Williams & Co	do	50 "
	Watt, Noble & Motley	do	50 "
166	Fred. Furst	New Orleans	50 shares.
	W'm Connery	do	25 "
	Martha J. Belknap	do	10 "
	G. Theurer	do	50 "
	B. Campiglio	do	5 "
	Alf. Vienne	do	20 "
	John Mure	do	20 "
	John O. Woodruff & Co	do	100 "
	Edward Parker	do	25 "
	Laborde & Hignes	do	50 "
	Joseph Santini	do	40 "

	Names.	Residence.	No. of shares.
	J. G. Lingham	do	100 "
	C. W. Cammack	do	20 "
	J. P. Labonisse	do	100 "
	D'r G. G. Griffin	Demopolis, Ala.	100 "
	A. J. Tully	New Orleans	25 "
	S. F. Slatter	do	50 "
	John B. Oliver	do	20 "
	Mary J. Deutzel	do	5 "
	Samuel J. Peters, j'r	Par. Jefferson, L'a	10 "
	Benj. F. Peters	New Orleans	10 "
	Ed. Villero	do	10 "
	Tintorer & Fatjo	do	20 "
	Sam. Ewing	do	20 "
	Ja's F. Stockton	do	10 "
	Smith, Harris & Co	do	50 "
	Duncan & Logan	do	25 "
	S. W. Rawlins & Co	do	10 "
	Tho. K. Price	do	50 "
	C. F. Pearson	do	10 "
	T. R. Brady	do	20 "
167	James Robb & Co	New Orleans	50 shares.
	Geo. Smedes & Co	do	50 "
	Jas. L. Calcote	Nashville, Tenn	50 "
	J. A. Haggerty & Co	New Orleans	50 "
	B. L. Mann & Co	do	20 "
	M. J. Zuntz	do	10 "
	W. C. Auld	do	50 "
	A. W. Merriam	do	10 "
	Price, Walsh & Co	do	100 "
	Henry Hopkins	do	10 "
	John Pemberton, pres. M. M. I. Co	do	300 "
	Alfred Kearney	do	50 "
	M. Simon & Frank	do	30 "
	B. Durand	do	10 "
	Charles Odier & Co	do	100 "
	Jos. B. Wright & Co	do	100 "
	Sosthene Thomas	do	25 "
	Gratina, Cammagen & Co	do	50 "
	J. Nemick	do	25 "
	Gordon & Foster	do	10 "
	S. Hayward	do	25 "
	D. Pretlo	do	10 "
	McLemore, Rayburn & Co	do	50 "
	McCutcheon, Howell & Co	do	50 "
	P. A. Giraud & Co	do	50 "
	Jno. M. Burrows	do	10 "
	O. O. Woodman	do	10 "
	L. Lay	do	10 "
	D. Felt & Stetson	do	10 "
	Thos. N. Pierce	do	20 "
	Edwin Campbell	do	50 "
168	Sam. Bell	New Orleans	25 shares.
	D. B. Spencer	do	25 "
	H. T. Lonsdale	do	100 "
	F. Newcomb	Louisville, Ky	25 "
	David C. Labatt	New Orleans	5 "
	R. W. Adams	do	10 "
	Jno. M. Gould	do	25 "
	Reeve Bros.	do	10 "
	Jas. J. Bard	do	30 "
	Luneschloss Bros. & Co	do	10 "
	C. H. C. Stone	do	50 "
	A. R. W. Kent	do	10 "
	Leighton & Barbot	do	10 "
	George Heation	do	25 "
	Geo. W. Sizer	do	25 "

	Names.	Residence.	No. of shares.
	Beste & Grima	New Orleans	10 "
	Douglas West	do	10 "
	Paul Tulane	do	50 "
	Aa. Miltenberger	do	20 "
	Jno. E. Fischer	do	10 "
	E. R. Stevens & Co	do	20 "
	H. H. Stanley	do	10 "
	Coleman, Putman & Co	do	50 "
	Seamen, Peck & Co	do	25 "
	B. T. K. Bennett	do	15 "
	Pooley, Nicol & Co	do	25 "
	Walter Nicol	do	25 "
	John C. Stewart	do	10 "
	A. W. Sanford	do	50 "
	Geo. Graham	do	5 "
	Chas J. Bell	do	2 "
169	Edw'd C. Hancock	New Orleans	5 shares.
	Chas. C. Maull	do	5 "
	W. A. Shropshire & Co	do	5 "
	Chas. E. Leverich	do	10 "
	Hugh Wilson	do	50 "
	J. L. Gubernator	do	10 "
	J. J. Kercheval	do	10 "
	J. U. Lavillebeurre	do	20 "
	O. B. Graham	do	25 "
	Olympe Boisse & Co	do	15 "
	Ferguson & O'Dowd	do	10 "
	Willoz & Bourdette	do	20 "
	S. B. Smith	do	5 "
	Jno. K. Collins	do	10 "
	Reed & Feild	do	30 "
	Alexander Bergamin	do	10 "
	P. Middlemiss	do	10 "
	John B. Bados	do	5 "
	Boudonsquie & Phillips	do	10 "
	Green & Crump	do	50 "
	John Hobson	do	5 "
	W'm Bonner	do	5 "
	W. E. Redding	do	10 "
	Rob't Pitkin	do	20 "
	R. A. Crafts & Co	do	50 "
	J. Burckett	do	5 "
	Speake & McCreary	do	10 "
	John Hurley & Co	do	20 "
	Lion & Pinsard	do	10 "
	J. Waterman & Bro	do	50 "
	J. J. Michne	Yazoo City, Miss	50 "
170	Henry B. Wheelage	New Orleans	5 shares.
	Alexander Levy & Co	do	20 "
	Neptune No. 4 Tomb Association	do	4 "
	Perkins & Co	do	50 "
	William H. Morgan	Parish of Plaquemine	20 "
	Sam'l M. Todd	New Orleans	10 "
	W'm E. Leverich & Co	do	30 "
	J. D'Arcy	do	10 "
	Theodore Gillespie	do	10 "
	W. C. Raymond	do	10 "
	Rugley, Blair & Co	do	50 "
	Abat Generes & Co	do	20 "
	P. Rotchford	do	10 "
	J. B. Steel	do	10 "
	W. F. Hodgkins	do	5 "
	J. D. Dameron	do	10 "
	Hall, Kemp & Co	do	25 "
	F. F. Folger & Co	do	10 "
	John L. Macaulay	do	15 "

	Names.	Residence.	No. of shares.
	Ross, Addison & Co	New Orleans	25 "
	Schmidt & Co	do	100 "
	Edw'd Nalle	do	25 "
	Leeds & Co	do	10 "
	Dan'l Edwards	do	30 "
	R. & J. Watson	do	10 "
	Broadwell Bros. & Co	do	20 "
	Ward, Saunders & Hunt	do	50 "
	Geo. A. Freret	do	10 "
	David Taylor	do	10 "
	Sickles & Co	do	10 "
	W. E. Pendleton	do	15 "
171	William T. Lavine	New Orleans	10 shares.
	James Reid	do	25 shares.
	Albin Rochereau	do	25 "
	P. B. Phelps	do	5 "
	Iowa Phelps	do	3 "
	Hoel B. Phelps	do	2 "
	E. K. C. Phelps	do	1 "
	W. G. Mullen	do	20 "
	P. Sauve	Parish of Jefferson	50 "
	J. T. Doswell & Co	New Orleans	10 "
	Joseph Sutton	do	10 "
	J. M. Relf & Co	do	10 "
	Frank Shaw, j'r, & Co	do	25 "
	J. K. Levy & Simpson	do	10 "
	O. LeBlanc & Son	do	20 "
	Voorhies, Griggs & Co	do	50 "
	B. P. Voorhies	do	25 "
	J. B. Murrison	do	25 "
	Cresup & McMullen	do	10 "
	John Sinclair	do	10 "
	George Clark	do	10 "
	J. H. Phelps	do	10 "
	Almira L. Phelps	do	10 "
	F. L. K. Ludwegsen	do	10 "
	H. J. Ranney	do	50 "
	F. Peschier	do	20 "
	Fred. Law	do	10 "
	B. S. Story	do	10 "
	P. B. McKelvey	do	2 "
	Joseph Ran	do	15 "
	L. R. Coleman	do	50 "
172	Carriere & Lee	New Orleans	30 shares.
	John C. Pooley	do	10 "
	A. Brown & Co	do	50 "
	Todd & Co	do	10 "
	G. M. Merrell	Arkansas	50 "
	Lowe, McReynolds & Co	New Orleans	25 "
	F. Lacroix	do	50 "
	Peter O'Donnell	do	3 "
	Davis & Jackson	do	10 "
	Lucy B. Armstrong	do	6 "
	Maria B. Corson	do	9 "
	Widow G. Sutterlin	do	10 "
	S. Becker	do	2 "
	Edw'd Schirmer	do	14 "
	Jesse W. Wilder	do	10 "
	Louis Stein	do	10 "
	R. Nugent & Co	do	50 "
	John Armstrong	do	10 "
	John Ludowig	do	10 "
	Potthoff & Knight	do	10 "
	Mark F. Bigny	do	5 "
	Rose & McCarthy	do	25 "
	W. W. Carrie & Co	do	15 "

	Names.	Residence.	No. of shares.
	J. A. Lacroix	New Orleans	50 "
	John W. Price	do	25 "
	Cuvellier & Peters	do	10 "
	Catharina Stumpf	do	5 "
	L. C. F. Galtermann	do	3 "
	H. L. Klumpp	do	10 "
	John Stumpf	do	5 "
	J. Shiz	do	10 "
173	Henry Wilson	New Orleans	10 shares.
	M. Schuppert	do	5 "
	William Bogel	do	10 "
	John Allen	do	5 "
	William C. Tompkins	do	25 "
	Cornelius Fellows	do	25 "
	S. O. Nelson	do	25 "
	V. M. Hermann	do	50 "
	Jamison & McIntosh	do	20 "
	W. C. Watts	do	25 "
	Thos. J. Casey	do	25 "
	Total number of shares ten thousand three hundred & twenty-eight, say		10,328

ARTICLE EIGHTH. These articles of association may be modified or altered & the capital stock may be increased to any sum not exceeding five millions of dollars, in the manner provided by law, with the consent obtained of the stockholders in general meeting convened after thirty days' notice. Whenever any increase of capital shall have been duly authorized, sixty days' notice of the same shall be given in newspapers published in the city of New Orleans; within such time stockholders shall have the privilege of taking additional shares of stock in proportion to the amount of their stock. Any shares not taken at the expiration of that time may be disposed of by the directors for the ben-
174 efit of the association, but at not less than par value.

ARTICLE NINTH. All powers of the corporation shall be vested in a board of directors, consisting of thirteen persons, each of whom shall hold in his own right at least twenty-five shares of the stock of said association.

ARTICLE TENTH. The following-named stockholders shall compose, & are hereby constituted, the first board of directors, to serve until superceded by their successors to be elected as provided in article eleventh, viz: J. J. Pearson, C. Fellows, L. O. Nelson, H. T. Lonsdale, R. McIlhenny, J. P. Labonisse, B. P. Voorhies, Thomas Murray, J. H. Dudley, W. C. Tompkins, J. O. Nixon, Walter Nicol, Fred. B. Brand.

ARTICLE ELEVENTH. On the first Monday of January, one thousand eight hundred & fifty-eight, & annually thereafter, an election for thirteen directors by the stockholders shall be held at the office of the corporation, of which election previous notice of at least ten days shall be given in two newspapers in this city.

ARTICLE TWELFTH. If the directors deem it expedient to reduce the number of their board, they may by a resolution to that effect,
175 which must be offered at least one week previous to voting thereon & at least thirty days prior to the annual election, reduce the same to not less than nine.

ARTICLE THIRTEENTH. A plurality of votes shall be sufficient to elect directors, who shall at their first meeting after their election

choose one of their number for president of the association, who shall be elected by a vote of the majority of the whole board. It shall be the duty of the president to preside at all meetings of the board, & in case of his absence or inability to act the board shall elect one of their members president' pro tem., who shall for the time being exercise the full powers of the president. All elections shall be by ballot, under the superintendence of inspectors appointed by the board from among the stockholders, not directors, at least one week prior to any election.

ARTICLE FOURTEENTH. The number of directors necessary for discounting drafts & notes & purchasing bills of exchange shall be determined by the by-laws. A majority of the board shall be necessary to form a quorum, and a decision of such majority shall be a valid corporate act.

ARTICLE FIFTEENTH. The board of directors are empowered
176 to make by-laws, to appoint & fix the salaries of the cashier and all other officers and employees of the association; to regulate the duties & fix the securities of all their employees, who shall hold their positions subject to the will of the board. They shall have power to alter or amend any rules, regulations, or by-laws whenever the interest of the corporation requires, and may appoint agents within and without this State under such conditions as to them shall seem proper. They shall have power also to fill any vacancies in their board resulting from any cause, which vacancies may be declared in consequence of death, resignation, absence for sixty consecutive days without leave, or any director not holding the required number of shares.

ARTICLE SIXTEENTH. The board of directors shall twice in each year, if the profits of the association justify it, after paying the expenses of the corporation, declare and pay such amount of dividends as they may deem proper after giving notice in one or more newspapers in this city.

ARTICLE SEVENTEENTH. Books for the registry & transfer of shares
of the capital stock shall be opened and kept subject to the re-
177 strictions directed by the by-laws. All transfers of shares shall be made on said books, & signed by the shareholder or his attorney, & which books the directors may close, but not for a longer period than ten days at a time, as often as convenience or expediency may require or suggest. The directors may also delegate to their agents, officers, or committees of their own body such powers as they may think proper and expedient.

ARTICLE EIGHTEENTH. No certificates of stock shall be issued until the full amount be paid thereon.

ARTICLE NINETEENTH. The board of directors may purchase for the corporation any evidences of debt that they may lawfully hold, & transfer the same, or any part of the same, to the auditor of public accounts as security for the payment of notes issued by said auditor to said corporation for circulation pursuant to law.

ARTICLE TWENTIETH. A failure from any cause to elect directors on a day named for that purpose shall not dissolve this association, but
the directors then in office shall hold over until another election
178 is held, of which notice shall forthwith be given, as provided in article eleventh, and continued until an election is had.

ARTICLE TWENTY-FIRST. Each shareholder, at all meetings for the election of directors or other purposes, shall be entitled, directly or by proxy, to one vote on each share of stock held by him, provided the person or persons offering to vote shall have owned his share or shares for three months prior to the day of voting, and provided that no person except females & persons classed as incapable by law, who at the

period of such election of directors or meeting of stockholders shall be in or within ten miles of the city of New Orleans, shall vote by proxy; & provided further, that no person shall vote in his own name or by proxy over five hundred votes at any such election for directors or meeting of stockholders.

ARTICLE TWENTY-SECOND. No two partners shall be eligible at the same time as directors of the association. Nor shall a director of any other bank, or his partner, be a director in this company.

ARTICLE TWENTY-THIRD. Minutes of all the proceedings of the board of directors shall be kept by the cashier & verified by the presi-
179 dent, and the president and cashier shall sign all notes, certificates of stock, contracts, and evidences of debt of the corporation.

ARTICLE TWENTY-FOURTH. The board of directors may accept provisionally any powers or privileges conferred on this association by any amendment of the law under which the same is formed or by the adoption of any new act of the legislature, but the final acceptance of such power or privilege shall be submitted to the stockholders for approval in the manner provided by law.

ARTICLE TWENTY-FIFTH. The affairs of this association shall be liquidated by three commissioners appointed by the stockholders, at a meeting convened for that purpose after the delay & in the manner adopted for the election of directors; said liquidators shall be solvent persons, residents of this city, not indebted to the association. Their term of office shall be assigned; all necessary power shall be conferred in them; the period for liquidation shall be fixed as well as their compensation in such manner as the stockholders may by resolutions in general meeting convened determined.

Thus done and passed in my office, at the city of New Orleans,
180 on this twenty-sixth day of August, in the year of our Lord one thousand eight hundred and fifty-seven, in the presence of Walter L. Rowley & Arthur Fleming, witnesses of lawful age & domiciliated in this city, who hereunto subscribe their names, together with the said parties and me, notary.

(Original signed)

Lewis & Oglesby.
Carroll, Pritchard & Co.
J. J. Person & Co.
J. J. Person.
W. A. Broadwell.
Fellows & Co.
Dan'l W. Adams.
W'm F. Smith, p'r pro. D. W. Adams.
F. Titus, by Titus, Groves & Co.
W. A. Johnson & Co.
Pilcher, Goodrich & Co.
F. B. Ernest.
N. B. Keene.
Gregor & Wilson.
John K. Lee.
M. Harris.
Jesse R. Jones.
Shelby, Seymour & Co.
Corson & Armstrong.
Charles W. Phillips, by W'm Gibson.
Freidlander & Gerson.
Sam'l Freidlander.
R. W. Estlin & Co.
T. C. Holmes.
James H. Dudley.
J. O. Nixon, p. pro. M'r's A. Clotilde Peune.
Aug. Bergerot.
W'm T. Palfrey.
E. Banksmith & Co.
C. H. Chase.
Wolf & Brother, p. pro. Paul Tricou.
Henry Tricou.
Henry Tricou.
M'r's Mary H. Hyman, p'r A. Covise.
M'r's Harriet J. Sumner, p'r A. Converse.

J. J. Warren, by Warren, Gillmore & Co.
J. L. Johnson & Co.

181 Pope, Ellison & Co.
Davis, Jenkins & Co.
Patton & Smith.
A. Levi.
A. F. Jones.
Forcheimer & Mayer.
D. Williams & Sons.
M. C. Edwards.
Frank Williams, by W'm Gibson.
A. Viavant, j'r, p. pro. Thomas Rodgers, j'r.
A. Viavant, j'r.
S. V. Phelps, p'r W. T. Phelps.
E. C. Whitehead, p'r W. T. Phelps.
Elijah Peale.
A. B. Cammack.
Geo. W. Parker.
Brown, Johnston & Co.
G. McIlhenny.
Martin, Owen & Cobb.
Baxter, Lovell & Co.
L. Bassett & Co.
J. J. Albert, per pro. J. L. Bach & Co.
M. Keliske.
A. B. James.
W'm Gregor.
Macgregor, Alloway & Co.,
182 p'r pro. John Haskins.
W. H. Aymar.
H. Mengens.
Cha's R. Bailey & Co.
Ads. Hamilton.
Wilson, Pomeroy & Co., p. pro. A. Hamilton, p. po. Hennings Muller & Gosling, Roadurk.
Steiner & Marinoni.
Puig Mir & Co.
Charles B. Singleton.
A. Seignouret.
S. W. Wingfield, p. p. J. P. Labonisse.
J. A. Galtan.
D'r G. G. Griffin, Demopolis, Ala., by Jno. G. Smith & Co.
A. J. Tully.
S. F. Slater.
John B. Oliver, p'r E. S. Oliver.
Mary J. Deutzel, p'r T. A. Deutzel.
Samuel J. Peters, j'r.
Benj. F. Peters, by S. J. Peters, j'r.
Ed. Villere.
Tintorer & Fatjo.
Tom S. McCay.
Townsend, Tompkins & Co.
F'co Sambola, j'r.
Warneken & Kirchoff.
G. W. Shaw & Co.
A. Poincy.
C. Schneider.
Palfrey & Co.
Frellsen, Stevenson & Co.
Cleveland Brothers & Co.
Goldsmith & Haber.
J. R. Macmurde.
Tho's Murray, p. pro. G. A. Poichet.
Hughes, Hyllested & Co.
C. Tiblier.
S. Schmidt.
Duntze Bro's.
J. G. Peppard & Co.
Calvin, Tate & Co.
S. O. Nelson & Co.
Fred. B. Brand.
Ja's A. Turner.
Rob't Mott.
Th. Capitaine.
Rob't L. Adams & Co.
A. Miltenberger & Co.
Sybrant & Co.
Schmidt & Zeigler.
Hewett, Norton & Co.
José Barba.
John Williams & Co.
Watt, Noble & Motley.
Martha J. Belknap, per pro. J. T. Belknap.
G. Theurer.
B. Campiglio.
Alf. Vienne, p'r A. Viavant, j'r.
John Mure, p'r A. Viavant, j'r.
John O. Woodruff & Co.
Edward Parker.
Laborde & Hignes.
Joseph Santini.
J. G. Lingham.
C. W. Cammack.
Henry Hopkins.
John Pemberton, p'd.
Merchants' M'l Ins. Co.
Alfred Kearney.
M. Simon & Frank.
B. Durand, p. pr. Charles Odur & Co.
H. F. Krumpp.
Jos. B. Wright, p. po. Sosthene Thomas.
J. Herr.
Gratiaa, Comagere & Co.
J. Numick.

Sam'l Ewing, per W'm Ewing.
Fred'k Furst.
W'm Connery.

183 Ja's F. Stockton.
Smith, Harris & Co.
Duncan & Logan.
S. W. Rawlins & Co.
Tho. K. Price.
C. F. Pearson.
T. R. Brady.
James Robb & Co.
Geo. Smedes & Co.
Ja's L. Calcote, by C. Fellows.
J. A. Hagerty & Co.
B. L. Mann & Co.
M. J. Zunts, by J. O. Nixon.
W'm C. Auld.
A. W. Merriam.
Price, Walsh & Co.
Reeve Bro's.
Ja's J. Bard.
Luneschloss Bro's & Co.
C. H. C. Stone, p. p. A. R. W. Kent.
C. H. C. Stone.
Leighton & Barbot.
George Heation.
Geo. W. Sizer.
Beste & Grima.
Douglas West.
Paul Tulone, p. pro. Ar. Miltenberger.
184 James Barron p. p. John E. Fischer.
Louis Hoichelher.
E. R. Stevens & Co., p. pro. L. Ogier.
H. H. Stanley.
Coleman, Putman & Co.
Seaman, Peck & Co.
B. T. K. Bennett.
Pooley, Nicol & Co.
John C. Stewart.
A. B. Sanford, p'r pro. Theo. Sanford.
Geo. Graham.
Cha's J. Bell.
Edw. C. Hancock.
Cha's C. Maull, p. p. Edw'd C. Hancock.
W. A. Shropshire & Co.
Ch's E. Leverich.
Hugh Wilson.
J. L. Gubernator.
William Lugster.
J. D'Arcy.
Gordon & Foster.
S. Hayward.
D. Pretto.
McLemore, Rayburn & Co.
McCutcheon, Howell & Co
P. A. Giraud & Co.
Jno. M. Burrows.
O. O. Woodman.
L. Lay.
D. Felt & Stetson.
Tho's N. Peirce.
Edwin Campbell, p'r P. N. Strong.
Per pro. Sam. Bell, P. Pomsine.
D. B. Spencer.
H'y T. Lonsdale.
F. Newcomb, p'r H'y T. Lonsdale.
David C. Labat.
R. W. Adams.
Jno. M. Gould.
J. J. Kercheval.
J. U. Lavillibeurre.
Per pro. O. B. Graham, Dan'l Goodman.
Olympe Boisse & Co.
Per pro. Ferguson & O'Dowd, C. W. Robinson.
Willoz & Bourdette.
L. B. Smith.
Jno. K. Collins.
Reed & Field.
Alexander Bergammi.
P. Middlemiss.
John B. Prados.
Boudonsquie & Phillips.
Green & Crump.
John Hobson.
W'm Bonner.
W. E. Redding.
Rob't Pitkin.
R. A. Crafts & Co., by Jos. H. Lane.
J. Burckett.
Speake & McCreary.
John Hurley & Co.
Lion & Pinsard.
J. Waterman & Bro.
J. J. Michne.
Henry B. Whelage.
Alexander Levy & Co.
Neptune No. 4 Tomb Association, by G. Avet.
Perkins & Co.
William H. Morgan.
Sam'l M. Todd.
P. p. W'm E. Leverich, W. G. Mullen.
P. Sauve.

Theodore Gillespie.
W. C. Raymond.
Rugeley, Blair & Co.
Abat, Generes & Co.
P. Rotchford.
W. F. Hodkins.
J. D. Dameron.
185 Hall, Kemp & Co.
F. F. Folger & Co.
Jno. L. Macauley.
Ross, Addison & Co.
Schmidt & Co.
Edw'd Nalls.
Leeds & Co.
Dan'l Edwards.
R. & J. Watson.
Broadwell Bro's & Co.
Ward, Saunders & Hunt.
Geo. A. Weret.
p. p. David Taylor, J. F. Baldwin.
Sickles & Co.
W. E. Pendleton, p'r Brabazon.
William T. Lavine.
James Reid.
Albin Rochereau.
P. B. Phelps.
Iowa Phelps, p'r W. V. Phelps.
Noel B. Phelps, p'r W. V. Phelps.
E. K. Collins Phelps, p'r W. V. Phelps.
G. M. Merrell, p. Geo. L. Karme.
Lowe, McReynolds & Co., p.p. H. M. Thompson.
186 Peter O'Donnell.
Davis & Jackson.
M'r's Lucy B. Armstrong, by J. J. Corson.
Maria B. Corson, by J. J. Corson.
W'do G. Sutterlin, by S. Becker.
S. Becker.
Edw'd Schriner.
Jesse W. Wilder.
Louis Stein.
P. pro. Richard Nugent & Co., G. V. Gamble.
John Armstrong.
John Ludowig.
Potthoff & Knight.
Mark F. Bigney, p'r I. M. Brabazon.
Rose & McCarthy.
Jamison & McIntosh.
Tho's J. Casey.
W. L. Rowley.
A. Fleming.
P. p. J. T. Doswell & Co., M. Abrams.
Joseph Sutton.
J. M. Relf & Co.
Frank Shaw, j'r & Co.
J. L. Levy & Simpson.
O. Le Blanc & Son.
F'cois Lacroix.
Voorhies, Griggs & Co.
B. P. Voorhies.
J. B. Murrison, p'r p. B. P. Voorhies.
Cresop & McMillan, p'r p. B. P. Voorhies.
John Sinclair.
George Clark.
J. H. Phelps.
Almira L. Phelps, by J. H. Phelps.
F. L. H. Ludwigsen.
H. J. Ranney, by C. Fellows.
F. Pescheir, by L. E. Forstall.
Fred. Lau.
B. S. Storey.
P. B. McKelvey.
Joseph Rau.
L. R. Coleman, p'r J'n M. Rutman.
Carriere & Lee.
John C. Pooley, by W. Nicol.
A. Brown & Co., by W. J. Key.
Todd & Co., by Geo. L. Karme.
W. W. Carre & Co.
J. A. Lacroix, by B. P. Voorhies.
John W. Price, by Walter H. Peters.
Cuvellier & Peters.
Catherine Stumpf, by John Stumpf.
L. C. F. Goldermann.
Walter Nicol.
H. T. Klumpp, No. 8 Carondolet.
John Stumpf.
J. L'hiz, per Cuelle Francois.
H'y Wilson.
M. Schuppert.
W'm Bogel.
John Allen, by Walter H. Peters.
W. C. Tompkins, by H. R. Alsobrook.
S. O. Nelson, by W'm Gregory.
V. M. Herrmann, p'r Duncan & McConnell.
Cornelius Fellowes, by Dan P. Logan.
W. C. Watts.

WALTER H. PETERS.
Not. Pub.

A true copy of the original.
New Orleans, August 26th, 1857.
(Six words interlined and approved.)
[SEAL.] (Signed) WALTER H. PETERS,
Not. Pub.

The undersigned, recorder of mortgages in and for the city &
187 parish of New Orleans, certifies that the foregoing charter was recorded this day in his office, in book No. 4, folios 58, 59, 60, 61, 62, 63, & 64.
New Orleans, August the 27th, 1857.
[L. S.] P. PAYANCE,
D'p'y R'c'r.

STATE OF LOUISIANA,
City of New Orleans, ss:

I, the undersigned, notary, hereby certify that the above is copy of the certificate appended to the original act, whereof the foregoing is a copy.
New Orleans, 28th Aug., 1857.
WALTER H. PETERS,
Not. Pub.

EXHIBIT K—*Offered in evidence by complainant Dec. 30th*, 1875.

U. S. circuit court, district of Louisiana.

FRANK F. CASE, REC'R CRESCENT CITY NAT'L B'k of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

(Extract from minute-book of Crescent City National Bank of New Orleans, page 147.)

SPECIAL MEETING.

MONDAY, *October 22d*, 1866.

188 Present, Messr. John Pemberton, pres't; J. Morgan Hall, O. D. Gaillard, B. P. Voorhies, Alfred Kearney, S. A. Shumway, J. J. Warren, & Geo. W. Hynson.

The statement of the actual position of the affairs of this bank having this day been submitted to the board, the following resolution, presented by J. Morgan Hall, was unanimously adopted:

Resolved, That the president and cashier convene the stockholders of the bank to submit to their consideration and approval the propriety of reducing the capital stock of the bank to $500,000 (five hundred thousand dollars.)

There being no further business they adjourned.
(Signed) JOHN PEMBERTON,
Pres't.
(Signed) CHA'S FAURIE, J'R.

I certify the foregoing to be a true and correct extract from the minute-book of the Crescent City National Bank, page 147, offered in evidence by complainant Dec'r 30th, 1875.
(Signed) F. A. WOOLFLEY,
Special Examiner.

EXHIBIT L—*Offered in evidence by complainant December 30th*, 1875.

U. S. circuit court, district of Louisiana.

189 FRANK F. CASE, REC'R OF THE CRESCENT CITY Nat'l Bank of New Orleans, *vs.* HENRY ABRAHAM & AL. } No. 7261.

(Extract from minute-book of Crescent City National Bank, pages 148 & 149.)

SPECIAL MEETING.

DECEMBER 24TH, 1866.

The board met this day. Present, John Pemberton, pres't; W. E. Seymour, Alfred Kearny, Geo. W. Hynson, J. Morgan Hall, S. A. Shumway, & O. D. Gaillard.

The president having explained to the board the object of the meeting in relation to the action of the stockholders on the reduction of the capital stock, as per resolution of 22d October last, the following resolution was on motion unanimously adopted:

Be it resolved, That in accordance with the agreement entered into and signed by the stockholders of this bank, representing and owning more than two-thirds of the number of shares of the capital stock of the same, at a general meeting held on the 26th of November last, in favor of the reduction of the capital stock to the sum of five hun-
190 dred thousand dollars, to be represented by 10,000 shares of fifty dollars each, the president be, and is hereby, authorized to cause the same to be executed, recorded, and published according to law, and to substitute certificates of stock of fifty dollars per share, in exchange for those of $100 previously issued.

The following-named gentlemen were appointed as commissioners to superintend the election for directors, to be held on Monday, January 7th, 1867, viz: Mess. Louis Bemas, W. C. Raymond, J. Peebles, H. Kendal Carter, & A. Boneval.

On motion the board adjourned.

(Signed) JOHN PEMBERTON, *Pres't.*

(Signed) CHA'S FAURIE, J'R, *Cashier.*

I certify the foregoing to be a true & correct extract from the minute-book of the Crescent City National Bank, pages 148 & 149, offered in evidence by complainant December 30th, 1875.

(Signed) F. A. WOOLFLEY, *Special Examiner.*

(Extract from the minute-book of the Crescent City Nat'l Bank, pages 166 & 167.)

SATURDAY, *March 14th*, 1868.

This being the day fixed for the general meeting of the stock-
191 holders of this bank to vote and act upon the proposed reduction of the capital stock of the same to the sum of $300,000, as per resolution of this board adopted at their meeting of the 10th of Feb-

ruary, 1868, E. H. Summers, esq., president of this bank, acting under and by virtue of a power of attorney granted to him for that purpose by several stockholders of this bank, representing 7,088 shares of the capital stock thereof, voted in favor of the reduction of said capital stock to $300,000 (three hundred thousand dollars), to be represented by 10,000 shares of $30 each.

(Signed) E. H. SUMMERS,
Pres't.

(Signed) CHA'S FAURIE, J'r,
Cashier.

REGULAR MEETING.

WEDNESDAY, *April 1st*, 1868.

The board met this day.

Present, E. H. Summers, pres't; Mess'rs J. Pemberton, J. Morgan Hall, G. W. Hynson, Alf. Kearney, W. E. Seymour, & B. P. Voorhies.

The minutes of the last sittings were read and approved.

The weekly statement was submitted and approved.

Amount of exchange purchased from 11th March to date, as
192 per exchange book, $118,735.83 (one hundred and eighteen thousand seven hundred and thirty-five $\frac{83}{100}$ dollars).

Amount discounted on 30th March, 1868, as per discount book, $887.20 (eight hundred & eighty-seven $\frac{20}{100}$ dollars).

The president having explained to the board the action of the stockholders on the proposed reduction of the capital stock, as per resolution of February 10th, 1868, the following resolution was on motion unanimously adopted:

Be it resolved, That in accordance with the action taken by the stockholders of this bank, representing and owning more than two-thirds of the number of shares of the capital stock of the same, at a general meeting held on the 14th March last, in favor of the reduction of the capital stock, to the sum of $300,000 (three hundred thousand dollars), to be represented by 10,000 shares of $30 (thirty dollars) each, the president be and is hereby authorized to cause the same to be executed, recorded, and published according to law, and to substitute certificates of stock of $30 (thirty dollars), per share in exchange for those previously issued.

On motion, the president was authorized to dispose of the city
193 & State bonds now on hand at the rate and in such amount as he may deem proper; and also to make any compromise or sell the portfolio in suspense, or any of its collaterals, at the best advantage possible.

On motion, the board adjourned.

(Signed) E. H. SUMMERS, *Pres't.*

(Signed) CHA'S FAURIE, J'r, *Cashier.*

I certify the foregoing to be a true and correct extract from the minute-book of the Crescent City National Bank, pages 166 & 167, offered in evidence by complainant Dec'r 30th, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

EXAIBIT M—*Offered in evidence by complainant December 30th*, 1875.

U. S. circuit court, district of Louisiana.

FRANK F. CASE, REC'R OF THE CRESCENT City Nat'l Bank of New Orleans, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

(Extract from the minute-book of the Crescent City National Bank, pages 242, 243, 244, & 245.)

REGULAR MEETING.

WEDNESDAY, *March 29th*, 1871.

The board met this day.

194 Present, E. H. Summers, pres't; Mess' Sigmund Katz, Richard Flower, L. H. Gardner, M. A. de Lizardi, Geo. L. Clapp, &. E. Newman.

The minutes of the last sitting were read and approved.

The weekly statement was submitted and approved.

Amount of exchange purchased from March 22d to date, $181,422.29 (one hundred & eighty-one thousand four hundred & twenty-two $\frac{29}{100}$ dollars).

Amount of paper discounted from March 22d to date, $50,755.58 (fifty thousand seven hundred & fifty-five $\frac{58}{100}$ dollars).

The president having presented to the board the note of the stockholders at a general meeting held after thirty days' notice, on the 25th March, on the following amendments to the charter of this bank, viz:

Proposed amendments to the charter of the Crescent City Bank.

NEW ORLEANS, *March 25th*, 1871.

Pursuant to public notice duly given for a convocation of the stockholders of the Crescent City Bank of New Orleans, to be held this day, the said stockholders, as hereinafter set forth, have this day cast

195 their vote on the proposition to adopt or reject the *the* following articles amendatory of the charter of said bank, to wit:

1° Every five shares of the present stock of said bank shall be converted into one share of one hundred dollars.

2° This series of stock, so converted, shall be entitled to any surplus realized from the assets of the banks as they now stand, over and above twenty dollars per share.

3° The capital subscribed shall not be less than four hundred thousand dollars, estimating the present stock as above stated.

4th. The board of directors shall be composed of seven members and no more; and every member of the board shall own at least five thousand dollars of stock in said bank.

The undersigned stockholders of the said Crescent City Bank do hereby vote on the above proposed amendments to the charter of the said bank in the manner following, viz:

In favor of same.	No. of shares.	Against the same.	No. of shares.
M. A. de Lizardi	1,130		
F. de Lizardi & Co., p. pro. M. A. de Lizardi	445		
E. H. Summers	344		
Pritchard & Bickham	274		
196 J. B. Alexander, p. pro. E. H. Summers	115		
J. B. Alexander & Co., p. pro. E. H. Summers	235		
Summers & Brammis	342		
John S. Bramin, p. pro. E. H. Summer	100		
Albert Kelley, p. pro. E. H. Summer	150		
T. S. Barton	250		
N. Orleans Savings Inst'n, p'r L. F. Generes, pres't	255		
G. W. Hynson	150		
Gus Winehill	30		
Speake & Buckner	100		
E. Newman & Co	118		
E. L. Levy	200		
Crescent Mut'l Ins. Co., p'r Tho's A. Adams, pres't	646		
Phelps, McCullough & Co	100		
Louis Ranger	120		
Richard Flower	25		
Henry Martin	30		
Garrard Craig & Co	100		
A. Levi	82		
D. S. Bryon	113		
Alcus, Scherck & Autey	100		
R. Thornhill	65		
Samuel M. Todd	10		
G. W. Logan, j'r, p'r pro. N. Logan	100		
197 Pedro del Valle, p'r pro. A. de Lizardi	100		
E. C. Funour	100		
Gustave Oliver	24		
Geo. L. Clapp	25		
Andrew Steward	25		
Le Gassieur & Binder	505		
W'm P. Ellison	50		
Lehman, Newgass & Co	75		
Factors & Traders' Ins. Co., H. D., pres't	400		
De Buys & Ogden	110		
Placide Forstall	400		
Hunt & McCauley	25		
W'm H. McClellan, p'r G. W. Hynson	200		
L. H. Gardner & Co	30		
C. M. Soria	28		
L. E. Cenas	25		
E. R. Stevens & Co	60		
C. Baquie	125		
Katz & Barnett	25		
Geo. H. Frost	37		

And it appearing that more than two-thirds of all the stock represented having voted for said amendments, it was, on motion of Ed. Newman, unanimously

Resolved, That, in accordance with the action taken by the stockholders of this bank, representing and owning more than two-
198 thirds of the capital stock of the same, at a general meeting held on the 25th of March, 1871, the president be, & he is hereby, authorized and empowered to take all the necessary legal steps to cause the amendments to the charter hereinbefore enumerated to be duly exe-

cuted, recorded, and published according to law; and that in accordance therewith, certificates of stock for one hundred dollars per share be subscribed for those previously issued.

There being no further business before the board, the meeting was, on motion, adjourned.

(Signed) E. H. SUMMERS,
Pres't.

(Signed) CHA'S FAURIE, J'R,
Cashier.

I certify the foregoing to be a true and correct extract from the minute-book of the Crescent City National Bank, pages 242, 243, 244, & 245, offered in evidence by complainants December 30th, 1875.

(Signed) F. A. WOOLFLEY,
Special Examiner.

199 EXHIBIT A²—*Offered in evidence by complainant December 29th, 1875.*

Extracts from transfer book of the Crescent City National Bank of New Orleans, series A.

FRANK F. CASE, REC'R OF THE CRESCENT CITY Nat'l Bank of New Orleans, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

Series A.

NEW ORLEANS, *March 10th*, 1873.

For value received we do hereby assign unto Germania National Bank of N. O. all our rights, title, and interest in twenty-four shares of the capital stock of *of* the Crescent City Bank, on which has been paid on each share, being , as described by a certificate issued to , numbered , dated ; which certificate by this transfer is null and void.

Witness.

PHELPS, McCULLOUGH & CO.,
Per HERM. ROEHL.

Series A.

NEW ORLEANS, *March 11th*, 1873.

For value received we do hereby assign unto W. A. Waldow all our rights, title, and interest in twenty-four shares of the capital
200 stock of the Crescent City Bank, on which has been paid on each share, being , as described by a certificate issued to , numbered , dated ; which certificate by this transfer is null and void.

Witness.

GERMANIA NATIONAL BANK,
Per HERM. ROEHL, *Cash.*

Series A.

NEW ORLEANS, *March 12th*, 1873.

For value received we do hereby assign unto Julius Fox all our rights,

title, and interest in twenty shares of the capital stock of the Crescent City Bank, on which has been paid on each share, being , as described by a certificate issued to , numbered , dated ; which certificate by this transfer is null and void.

Witness.

ALCUS SCHERCK & AUTEY.

EXHIBIT B²—*Offered in evidence by complainant Dec'r 29th*, 1875.

Extract from transfer book, series B, of the Crescent City National Bank of New Orleans.

201 FRANK F. CASE, RECEIVER OF THE CRESCENT CITY NATIONAL BANK OF NEW ORLEANS, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

Series B.

NEW ORLEANS, *March 10th*, 1873.

For value received we do hereby assign unto Germania National Bank of N. O. all our rights, titles, and interest in seventy-six shares of the capital stock of the Crescent City Bank, on which has been paid on each share, being , as described by a certificate issued to , numbered , dated ; which certificate by this transfer is null and void.

Witness.

PHELPS, McCULLOUGH & CO.,
Per HERM ROEHL.

Series B.

NEW ORLEANS, *March 10th*, 1873.

For value received we do hereby assign unto W. A. Waldow all our rights, title, and interest in seventy-six shares of the capital stock
202 of the Crescent City Bank, on which has been paid on each share, being , as described by a certificate issued to , numbered , dated ; which certificate by this transfer is null and void.

Witness.

GERMANIA NATIONAL BANK,
Per HERM ROEHL, *Cas.*

Series B.

NEW ORLEANS, *March 12th*, 1873.

For value received we do hereby assign unto Julius Fox all our rights, title, and interest in fifty shares of the capital stock of the Crescent City Bank, on which has been paid on each share, being , as described by a certificate issued to , numbered , dated ; which certificate by this transfer is null and void.

Witness.

ALCUS, SCHERCK & ANTEY.

203 Series A.

NEW ORLEANS, *March 13th*, 1873.

For value received I do hereby assign unto Geo. J. Vincent all my rights, title, and interest in eight shares of the capital stock of the Crescent City Bank, on which has been paid on each share, being , as described by a certificate issued to , numbered , dated ; which certificate by this transfer is null and void.

Witness.

B. J. WEST.

Series B.

NEW ORLEANS, *March 13th*, 1873.

For value received I do hereby assign unto Geo. J. Vincent all my rights, title, and interest in fifty shares of the capital stock of the Crescent City Bank, on which has been paid on each share, being , as described by a certificate issued to , numbered , dated ; which certificate by this transfer is null and void.

Witness.

B. J. WEST.

204 I certify the foregoing 5 page' to be a true and correct transcript of the transfer books A & B of the Crescent City National Bank as relates to the said defendants, and offered in evidence by complainant Dec'r 30th, 1875.

(Sig'd) F. A. WOOLFLEY,
Special Examiner.

205 *Testimony for defendants.*

Testimony taken on the part of defendants under the 67th rule of practice for the courts of equity of the United States by F. A. Woolfley, special examiner, duly appointed by the aforesaid court to take the depositions of the witness' in the above-entitled cause.

United States circuit court, fifth circuit, district of Louisiana.

FRANK F. CASE, REC'R OF THE CRESCENT City Nat'l Bank of New Orleans, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

NEW ORLEANS, *Friday, January* 14, '76.

Appearances this day: John D. Rouse & J. R. Beckwith, esqrs., solicitors for complainant; D. S. Bryon, esq., one of the defendants in p. pa.; Henry B. Kelly, for Henry Abraham and others, defendants; Sambola & Ducros for Jos. Barba and Briere.

FRANK F. CASE, a witness produced, sworn, and examined on behalf of defendants, deposes and says:

By D. S. Bryon, defendant:

206 Q. You are the receiver of the Crescent City National Bank?

A. Yes, sir; I am.

Q. What amount of claims have been proved against the bank up to this date?

(Solicitors for complainant object to all testimony showing or intending to show the condition of the Crescent City National Bank of New Orleans at the present time, or at the time of the institution of this suit, and the amount of its assets and liabilities, as irrelevant and impertinent to the issue.)

A. The amount of claims that have been proven so far is $641,780.15, and there are still outstanding and unproved claims to the amount of $79,644.64, including $4,000 by the Citizens' Bank for damages.

Q. What is the character of those claims that are not proved?

A. Different things; some sterling exchange, the old circulation of the Crescent City Bank, and balances due depositors.

Q. The old circulation would have nothing to do with this?

A. Yes, sir; it would.

Q. What amount has been collected from the assets of the bank?

207 A. You mean by the receiver or the Comptroller of the Currency?

Q. Both receiver and Comptroller.

A. Up to the time this statement was made there were $412,889.75.

Q. When was that statement made?

A. On the 30th September, 1875.

Q. Has anything since been collected?

A. Very little.

Q. Has any part of that amount, $412,889.75, been collected by the Comptroller?

A. Yes, sir; a good portion of it.

Q. What amount?

A. I could not give you the exact amount just now. I would have to have the schedule with me.

Q. About what amount?

A. Of that amount $189,022.28 was collected by the Comptroller, and the balance, $223,867.47, was collected by the receiver.

Q. What amount of dividends have been paid to date?

A. Up to this date there have been paid in dividends $319,039.35, and checks to the amount of $64,150.00 are now on the way to pay another dividend; that is the total amounts.

Q. Tell how much does that make.

208 A. $383,189.55 that will have been paid in dividends when the checks have arrived.

Q. What amount of money does that leave on hand?

A. It does not leave any at all, except a couple of thousand dollars in my hands as receiver, and it takes everything out of the hands of the Comptroller, except a few hundred dollars.

Q. The difference between the two amounts have been paid out as commissions and expenses?

A. I suppose so; the expenses of the receivership.

Q. What progress are you making in collecting at present?

A. I am making very slow progress.

Q. Have you collected all of these amounts that were given as pledges and securities to different parties?

A. Yes, sir; we have collected a good portion, but there is some of it we have not collected. The claim against Cavaroc we have not collected, for the good reason that he has gone into bankruptcy.

Q. Against Cavaroc individually?

A. Cavaroc & Son.

Q. Charles Cavaroc's amount was $16,000?

A. Yes, sir.

Q. Has any of it been collected?

209 A. No, sir.

Q. He had not failed at that time, three years ago?

A. He was on the brink of failure then; he was insolvent.

Q. Nobody knew it; it is only within a year that he has failed?

A. He was known to be insolvent at the time the New Orleans National Bank failed.

Q. In regard to Duncan, Sherman & Co., has that been paid?

A. Yes, sir.

Q. $35,000?

A. No, sir, not that amount; some $22,000, I think, the judgment called for. The record is here in court.

Q. Against Duncan, Sherman & Co.?

A. Yes, sir.

Q. What was the occasion of the discrepancy between the two amounts?

A. That is a matter that I do not recollect now, but it was satisfactory to all parties concerned then.

Q. The case of the Hibernia Bank, what has been done with that?

A. So far nothing has been done towards recovering that; the matter is in the hands of my attorney, M'r Rouse.

Q. The case of Meyer, Weiss & Co. for $21,577.78, what has been done in that?

210 A. That is in the same condition.

Q. The Hibernia Bank's amount is $5,394.44; is that correct?

A. I think it is. I think it was £1,000.

Q. R. A. Curd & Co., what has been done in that case?

A. I do not propose to go to Liverpool to sue them.

Q. Do you know what has been done?

A. No, sir.

Q. It is in the hands of the Comptroller?

A. No, sir, nor in the hands of my attorneys. I did not think the prospects of getting paid would be enough to pay an attorney to bring suit.

Q. Does it not stand upon the same footing as the others?

A. Yes, sir; these parties may stand the same, but the claim is of a different footing when you have to go to England to sue them.

Q. Is not the law the same?

A. Not in every particular.

Q. The Citizens' Bank, have they paid?

A. They paid up a large portion of it; yes, sir.

Q. There is still a balance due?

A. No, sir, there is no balance due; it was settled by the judgment what portion they should pay. That is also of record in this court.

211 Q. There was an offset of what would be coming to them as a dividend?

A. That is the way it was settled. We allowed them so much dividend equal what the other creditors had received in dividends already paid.

Q. What was the amount of these bills of exchange on de Lizardi & Co., £111,000?

A. Yes, sir.

Q. Have you settled with the holders of all these bills?

A. Not with all of them.

Q. All that have presented their claims?

A. Yes, sir; all that were allowed, and a dividend paid on them.

Q. Have you resisted the payment of any claim that has been presented to you, or have you questioned any claim?

A. Yes, sir; I have questioned the claim of the Citizens' Bank for $4,000 damages. I have put it on the list as in dispute, and they are now suing in this court. Their first demand was for $8,800, but they were non-suited, and they now bring another suit for $4,000.

212 Q. This £9,200 in England, is that owed by Curd & Co., or by a different party?

A. There are £9,200 in the hands of de Lizardi & Co.'s receiver, or the assignee of his estate. That is in controversy, and I am rather doubtful now whether I will get it at all or not; he still holds on to it.

Q. Has the case been tried?

A. No, sir; not yet.

Q. There is another claim in England of £2,100?

A. That is that claim of Curd & Co., I think.

Q. The claim of Curd & Co. stands upon a different footing from the other?

A. Yes, sir; very different.

Q. Does the Hibernia Bank propose to submit to the suit?

A. I think they will; I do not know. The matter is in the hands of my attorney, and I have not heard anything lately from him.

Q. I see there were $15,000 the estimated value of real estate—some plantation?

A. Yes, sir; that was put down at that estimate. It cost $15,000, but when I put it down I estimated it at $7,500, and it has not paid that out. I lost $1,500 on the estimate.

Q. That is still on hand?

213 A. No, sir; that has been sold and all the real estate the bank owned.

Q. Was this plantation of de Lizardi & Co.?

A. That is a different one. I disbursed money on account of that. That was bought for the purpose of securing an overdraft of de Lizardi & Co. for $20,000, and I am still $4,000 out on that purchase, but I expect to get it in on the sale of the property.

Q. Where was the other place situated?

A. There was a place over in Pass Christian, Mississippi.

Q. A $15,000 place?

A. No, sir; it cost the bank $4,500, and I sold it for $2,200. That money has gone into the United States Treasury.

Q. Has the money been collected?

A. Yes, sir; and paid over to the Treasury of the United States, and paid out again in dividends. The case of M. G. de Lizardi and Pedro del Valle is managed altogether by the Comptroller of the Currency, and the receiver of the bank has no information with regard to the situation of these affairs.

Q. You forwarded information and testimony to show that M. G. de Lizardi was a partner of the house in London?

214 A. As far as I could establish it by the information I received here.

Q. M. G. de Lizardi is in Mexico?

A. Yes, sir; so I am informed. I do not know anything about it myself personally.

Q. And F. de Lizardi & Co. is the title of the firm in London?

A. Yes, sir; as far as I am informed.

Q. And M. A. de Lizardi & Co. is the title of the firm here?

A. Yes, sir.

Q. And you forwarded evidence to Mexico to show that M. G. de Lizardi was a partner of the firm in London?

A. I do not say that I forwarded it, I say that I forwarded a circular letter that was in possession of the Citizens' Bank. I got a copy of it made by a notary public and forwarded it there. The Citizens' Bank holds the original yet.

Q. Have you any method of showing the drafts or the exchange that the Crescent City National Bank forwarded to meet these de'Lizardi & Co. drafts?

A. I have got nothing except the books to show that, and the list that was made out for me by the general bookkeeper, when I took possession of the bank.

Q. But what I mean is the exchange that the bank sent to
215 meet; not the drafts that were drawn by the bank, but the exchange remitted to cover them.

A. I have got a list of them.

Q. With the dates?

A. Yes, sir.

Q. Will you furnish it?

A. I can furnish you with a copy of that list, but I do not know that it contains the names and dates.

(M'r Byron proposes to offer in evidence the copy when furnished by the receiver—marked)

By M'r Kelly, for Henry Abraham et al., defendants:

Q. Can you give me the ratio of the entire outstanding indebtedness of the bank, after deducting the dividends paid, and the checks coming to pay dividends; the ratio between the entire outstanding indebtedness of the bank and the entire capital stock of the bank?

A. I am not an arithmetician enough for that. I can give you the entire amount of the liabilities and outstanding claims.

Q. Does it amount to anything like seventy per cent.?
216 A. I do not know that; you can calculate it. The liabilities are $721,424.79.

Q. What balance remains to be provided for?

A. There are $338,235.34 yet unpaid, and I must take into consideration that all these claims are entitled to interest upon them, and that amount deducted from $721,424.79 leaves a balance of $319,235.34.

Q. Then there is another dividend?

A. That is included.

Q. Leaving an entire balance outstanding of $338,235.34 as the liabilities of the bank, not including interest?

A. Up to the present time.

Q. Then $338,335.34, not including interest, is the entire indebtedness of the bank now outstanding and remaining to be provided for?

A. Yes, sir.

Q. What amount did you say of liabilities existed that were not proved as claims?

A. $75,644.64.

Q. Will it require, to provide for and pay all the outstanding claims that have been proved, an assessment of seventy per cent. upon the entire capital stock of this bank?

A. I do not think that is a proper question for me to reply to.
217 That is the business of the Comptroller of the Currency.

Q. I ask you is that amount necessary to pay these claims?

(It is understood by counsel that all this and the foregoing testimony

is received under the objection of complainant's solicitors as recited at page 2 of this transcript.)

A. From my present prospects in suing these stockholders that are good I do not think it will pay the liabilities.

Q. You are seeking to make the solvent stockholders pay for the insolvent ones?

A. The Comptroller of the Currency does not authorize me to sue persons notoriously insolvent.

Q. I want to know whether it requires an assessment of seventy per cent. upon the capital stock of this bank to pay and provide for the entire outstanding claims of the bank proved against it and to be paid in full, supposing all the stockholders pay the assessment?

A. I think the seventy per cent. assessment, provided all the stockholders are good, will pay out the liabilities.

Q. What is the amount of the claims outstanding?

A. There are in amount $721,442.79 in all.

218 Q. A large amount of these liabilities are not proved.

A. But the parties are entitled to prove them up and get interest on them as well as anybody else.

Q. Well, it would have been time enough to sue the stockholders when they are proved; it is not necessary now?

A. I was ordered to do it now; I could not do it until the order of the Comptroller of the Currency gave me the right. I have put a great many claims against debtors into judgments in this court, and the State courts also.

By M'r Bryon, defendant:

Q. Have you brought many suits against debtors?

A. Yes, sir; I have a great many judgments now against debtors, and I would like if some of the creditors would show me property upon which I could collect.

By M'r Kelly, for H'y Abraham et al.:

Q. I want to know whether it is sought by this suit, as you are the complainant, to make the solvent stockholders pay the insolvent ones; that is, whether their contribution is to be increased on account of the non-payment of the assessment by any of the stockholders that are insolvent?

219 A. I do not think that is the intention.

By M'r Bryon, defendant:

Q. State whether there is any contract of interest on any of these claims, or is it the legal interest.

A. It is the legal interest; five per cent.

By M'r Kelly, for Hy. Abraham et al.:

Q. I found by my calculation that a little over fifty per cent. would pay off the entire outstanding indebtedness of the bank as proved according to the figures you have given?

A. I go by the direction of the Comptroller of the Currency. I do not know whether seventy per cent. is sufficient or not, but that is the order of the Comptroller.

Q. From the figures you have given I find that an assessment of a little over fifty per cent. would pay off, without calculating the interest, all the outstanding claims proved against the bank, and what is the necessity of suing for twenty per cent. beyond that?

A. I have no discretion in the matter at all. It is the Comptroller of

the Currency that is to determine that question. Possibly you may be right; fifty per cent. might pay off the debt, but I doubt it very much.

(Signed) FRANK F. CASE.

220 Subscribed & sworn before me January 14th, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

The examination was here adjourned to Monday, January 17th, 1876, at three o'clock p. m.

NEW ORLEANS, *Monday, January 17th*, 1876.

FRANK F. CASE, REC'R, ETC., *vs.* HENRY ABRAHAM ET AL. } No. 7261.

On this day at the hour appointed, 3 o'clock p. m., John D. Rouse, solicitor for complainant, and E. B. Krutts Chuitt, esq., for Aleus Scherck & Autey, and Samuel Friedlander having personally appeared, and no witnesses appearing, the examination was adjourned to to-morrow, Tuesday January 18, 1876, at 3 o'clock p. m.

NEW ORLEANS, *Tuesday, January 18th*, 1876.

On this day at the hour appointed, three o'clock p. m., J. D. Rouse, esq., solicitor for complainant, being present, and no other counsel of record having entered an appearance, the case was adjourned over to Wednesday, January 19th, 1876.

NEW ORLEANS, *Wednesday, January 19th*, 1876.

221 On this day at the hour appointed, three o'clock p. m., J. D. Rouse, esq., solicitor for complainant, being present, and no other counsel of record having entered an appearance, the case was adjourned to Thursday, January 20th, 1876, at 3 o'clock p. m.

NEW ORLEANS, *Friday, January 21st*, 1876.

On this day at the appointed hour, three o'clock p. m., J. D. Rouse, esq., solicitor for complainant, being present, and none of the defendants' counsel of record having entered an appearance, the case was adjourned over to Saturday, January 22d, 1876, at three o'clock p. m.

NEW ORLEANS, *Saturday, January 22d*, 1876.

On this day at the appointed hour, three o'clock p. m., J. D. Rouse, esq., solicitor for complainant, being present, and none of the defendants' counsel having entered an appearance, the case was thereupon continued to Monday, January 24th, 1876, at three o'clock p. m.

NEW ORLEANS, *Monday, January 24th*, 1876.

On this day at the appointed hour, J. D. Rouse and J. R. Beckwith being present, and none of the several defendants' counsel of record having entered an appearance, the case was thereupon continued to Tuesday, January 25, 1876, at three o'clock p. m.

222 NEW ORLEANS, *Tuesday, January 25th*, 1876.

On this day at the appointed hour, Mess'r's J. D. Rouse and J. R. Beckwith, esq'r's, being present for complainant, and E. B. Kruttschuitt,

esq'r, for Alcus, Scherck & Antey and Sam'l Friedlander, Henry C. Miller, esq., for Placide Forstall et al., David S. Bryon, one of the defendants, in p. pa., being present, and Frank F. Case, receiver, as a witness, whereupon the meeting was adjourned to Wednesday, January 26th, 1876.

NEW ORLEANS, *Wednesday, January 26th*, 1876.

FRANK F. CASE, REC'R OF THE CRESCENT City Nat'l Bank of New Orleans, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

General examination, on behalf of all the defendants, resumed this day.

Present, J. D. Rouse, esq., solicitor for complain't, Henry C. Miller, esq., solicitor for Placide Forstall et al., defendants; E. B. Kruttschnitt, esq., for Alcus, Scherck & Antey and Samuel Freidlander, D. S. Bryon, esq., one of the defendants, in p. pa.

FRANK F. CASE, receiver, being recalled by the defendants and examined, says:

By M'r Miller for P. Forstall et als., def'ts.

223 Q. Can you give us the amount of the assets uncollected by the receiver of the Crescent City National Bank?

A. I can.

Q. Give us a statement of the assets of the Crescent City National Bank that are uncollected.

(M'r Rouse, for complainant, objects to the question and the evidence sought as irrelevant under the issues in this case.)

A. I put it all under the head of "bills receivable." It is all in the portfolio that way. There are $12,467.91 bills receivable that are good and will probably be collected. There are $70,182.42 that are very doubtful, and there are $59,386.22 that are utterly worthless. That is the portfolio.

Q. Have you made any efforts to collect this amount that you consider doubtful?

A. Yes, sir. I have a great deal of it in judgments. Nearly the whole of that amount which is good ($12,467.91) is in judgments and in and in process of collection.

Q. You stated there were about $59,000 debts which you considered bad; have you made any efforts to collect that portion?

224 A. I made an examination and I find that there is no use of spending money trying to collect it; that the parties were perfectly insolvent, and nothing could be realized.

Q. You brought no suits, then, for that?

A. In some instances I may have brought suits where there is the slightest prospect of getting anything; I file suits.

Q. In this amount, do you enumerate all the uncollected demands that have on hand?

A. No, sir; there is a plantation in the parish of Pointe Coupee, which I estimate at $4,000. That is represented in the bills receivable put down as collectable.

Q. Have you any other bills receivable except what you have enumerated?

A. No, sir. There is a lot of overdrafts, amounting to $89,000 or $90,000, that are worthless.

Q. I find that when the receiver (M'r Cha's Case) took possession of the Cresent City National Bank on the 19th March, 1873, that he then estimated the assetts of the bank to be $1,159,798.

A. If you read the first part of that statement, you will find that he put them down at their nominal value.

225 Q. In that statement the receiver puts down the bills estimated to be good at $78,000, and estimated as "doubtful" $35,000 in round numbers. What portion of these assets have you realized?

A. That I cannot say exactly. I made a calculation. I made collections amounting to $223,000 and deposited it in the Treasury of the United States.

Q. That is the amount of your collections as receiver up to the present time?

A. Yes, sir.

Q. And of that you have paid out in dividends how much?

A. $383,189.55.

Q. That is up to the present time?

A. Yes, sir.

Q. You are familiar with this statement of M'r Charles Case, receiver, made on the 19th March, 1873?

A. It is so long ago I have forgotten it.

Q. You prepared it?

A. Yes, sir; under the supervision of M'r Cha's Case, the writing part of it.

Q. According to that estimate of the assets that you made at that time you made an excess of liabilities over the assets amounting to $456,952.07. Did you not?

226 A. If it is down there (a newspaper), I suppose it is so; but that includes $500,000 of the capital stock.

Q. I present this to you and ask you whether that is the statement to which you referred as having been made by you under the supervision of M'r Cha's Case, receiver?

A. All that I say about that statement is that I did the writing part of it, but I recognize it as the report he sent to the Comptroller.

(Witness being presented with the newspaper statement now filed in evidence and marked "Def'ts, B," states that is the statement made by him under the direction of M'r Charles Case, receiver, and forwarded to the Comptroller.)

Q. In making up that statement did you make an examination of the assets of the bank?

A. Mr. Charles Case did. I had a great many other matters to attend to and did not make the sketch.

Q. Was M'r Charles Case the receiver of the Crescent City National Bank at that time?

A. Yes, sir; he was.

(M'r Miller, on behalf of the defendants P. Forstall et als.,
227 offers in evidence the newspaper column, marked "Defendants, B.")

Q. Have any claims been presented to you as receiver from foreign countries?

A. No, sir. I think the indebtedness of the bank is all in the United States.

Q. You are familiar with the financial condition of Meyer, Weiss & Co.?

A. Only from general report.

Q. That they are responsible?

A. Yes, sir; they are so reported.

Q. And the Hibernia Bank? You know that to be a solvent institution?

A. Yes, sir; I believe it is.

Q. On your theory of enforcing the liability of the stockholders, do you not assume that you must make the money which the insolvent stockholders cannot pay?

A. No, sir; I do not assume anything of the kind. I make my basis on the $500,000 capital stock, which at seventy per cent. would only produce $350,000 if it was all collected.

(Signed) FRANK F. CASE.

Subscribed and sworn before me, January 26th, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

228 M'r Rouse, for complainant, at the time the foregoing evidence of M'r Case was given and the statement of M'r Charles Case was offered objected, and still objects to the same, as being irrelevant, and not pertinent to the issues in this case.

After which the examination was adjourned to Thursday, January 27th, 1876, at seven o'clock p. m.

NEW ORLEANS, *Thursday, January 27th*, 1876.

This evening at the appointed hour, seven o'clock p. m., there being present J. R. Beckwith, esq., solicitor for complainant, and none of the other counsel of record for the several defendants having entered an appearance, the case was continued to Friday, January 28th, 1876, at three o'clock p. m.

NEW ORLEANS, *Friday, January 28th*, 1876.

FRANK F. CASE, REC'R OF THE CRESCENT CITY Nat'l Bank of New Orleans, *vs.* HENRY ABRAHAM, ET AL. } No. 7261.

General testimony resumed this day on behalf of defendants, there being present, J. R. Beckwith, esq., solicitor for complainant;
229 E. B. Kruttschnitt, esq., for Aleus Scherck & Autey, and Sam'l Friedlander, defendants; David S. Bryon, esq., one of the defendants, in p. pa.; Henry C. Miller, esq., for Placide Forstall et al. defendants; Robert H. Mott, esqr., for M'r's Jane Shumway, defendant; J. E. Austin, esqr., W. C. Lipscomb, defendant.

FRANK F. CASE, a witness recalled for the defendants, deposes and says:

By M'r Miller, for P. Forstall et als.:

Q. You stated that the liabilities of the Crescent City National Bank amounted to $721,424,79?

A. That is at the present date, subject to the deduction of the dividends paid.

Q. Is there not included in this 721,424.79 debts due by the bank to R. A. Curd & Co. of £2,100, the Hibernia Bank £1,000, and Meyer, Weiss & Co. £4,000?

A. These, of course, are outstanding yet as claims against the bank.
Q. But they are included in this amount of $721,424.79?
A. Yes, sir; in the amount of unproved claims.
Q. Did not R. A. Curd & Co., the Hibernia Bank, and Meyer,
230 Weiss & Co., hold pledges of the Crescent City National Bank?
A. I don't think they did in fact I think their bills have been paid by the Citizens' Bank.
Q. Then they have ceased to be debts?
A. I claim them debts yet; I am proceeding against them, or some of them, as I proceeded against the Citizens' Bank and others.
Q. What was the basis of your proceeding against them and the Citizens' Bank was it to make them surrender the assets that they held?
A. Yes, sir; the same as the Citizen's Bank.
Q. Then, as I understand you, R. A. Curd & Co., the Hibernia Bank, and Meyer, Weiss & Co. claim to hold as pledges, the assets of the bank?
A. Yes, sir.
Q. You do not recognize their pledges, and are proceeding to recover them?
A. Yes, sir; on the same ground as I did against the Citizens' Bank,
Q. They claim to apply the proceeds of their pledges to the payment of their debts?
A. Yes, sir; but I do not recognize it.
Q. But if they hold on to these pledges, they will not be creditors?
A. That would have to be decided by the court.
231 Q. But with reference to the amount pledged, the assets are sufficient to pay their debts?
A. Yes, sir.
Q. If, then, there is deducted from $721,424.79 the debts referred to and claimed of R. A. Curd & Co., the Hibernia Bank, and Meyer, Weiss & Co., the liabilities of the bank would be reduced that much?
A. Just that much.
Q. State what is the equivalent in currency of £2,100 due R. A. Curd & Co., £1,000 due the Hibernia Bank, and £4,000 due Meyer, Weiss & Co.
A. It depends on the rate of exchange. I have it on the books.
Q. What was its equivalent at the time of the failure of the bank?
A. I don't know; but I think the amount of Meyer, Weiss & Co. was $21,000.
(Witness being asked what was the equivalent in our currency of the debts claimed to be due by the Crescent City Bank to R. A. Curd & Co., the Hibernia Bank, and Meyer, Weiss & Co., states that it would be about $38,319.13.)
Q. You are now prosecuting a suit against the receiver of De Lizardi & Co. for the assets of the Crescent City National
232 Bank?
A. Yes, sir; I am so informed by my attorneys; but that they have not much prospect of success.
Q. These assets are now in the hands of the receiver of De Lizardi & Co.?
A. Yes, sir.
Q. What is the value of these assets?
A. £9,200.
Q. What is the equivalent of £9,200 in our currency?
A. I think about $50,000.

Q. That they are responsible?

A. Yes, sir; they are so reported.

Q. And the Hibernia Bank? You know that to be a solvent institution?

A. Yes, sir; I believe it is.

Q. On your theory of enforcing the liability of the stockholders, do you not assume that you must make the money which the insolvent stockholders cannot pay?

A. No, sir; I do not assume anything of the kind. I make my basis on the $500,000 capital stock, which at seventy per cent. would only produce $350,000 if it was all collected.

(Signed) FRANK F. CASE.

Subscribed and sworn before me, January 26th, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

228 M'r Rouse, for complainant, at the time the foregoing evidence of M'r Case was given and the statement of M'r Charles Case was offered objected, and still objects to the same, as being irrelevant, and not pertinent to the issues in this case.

After which the examination was adjourned to Thursday, January 27th, 1876, at seven o'clock p. m.

NEW ORLEANS, *Thursday, January 27th*, 1876.

This evening at the appointed hour, seven o'clock p. m., there being present J. R. Beckwith, esq., solicitor for complainant, and none of the other counsel of record for the several defendants having entered an appearance, the case was continued to Friday, January 28th, 1876, at three o'clock p. m.

NEW ORLEANS, *Friday, January 28th*, 1876.

FRANK F. CASE, REC'R OF THE CRESCENT CITY Nat'l Bank of New Orleans, *vs.* HENRY ABRAHAM, ET AL. } No. 7261.

General testimony resumed this day on behalf of defendants, there being present, J. R. Beckwith, esq., solicitor for complainant;
229 E. B. Kruttschnitt, esq., for Aleus Scherck & Autey, and Sam'l Friedlander, defendants; David S. Bryon, esq., one of the defendants, in p. pa.; Henry C. Miller, esq., for Placide Forstall et al. defendants; Robert H. Mott, esqr., for M'r's Jane Shumway, defendant; J. E. Austin, esqr., W. C. Lipscomb, defendant.

FRANK F. CASE, a witness recalled for the defendants, deposes and says:

By M'r Miller, for P. Forstall et als.:

Q. You stated that the liabilities of the Crescent City National Bank amounted to $721,424,79?

A. That is at the present date, subject to the deduction of the dividends paid.

Q. Is there not included in this 721,424.79 debts due by the bank to R. A. Curd & Co. of £2,100, the Hibernia Bank £1,000, and Meyer, Weiss & Co. £4,000?

A. These, of course, are outstanding yet as claims against the bank.
Q. But they are included in this amount of $721,424.79?
A. Yes, sir; in the amount of unproved claims.
Q. Did not R. A. Curd & Co., the Hibernia Bank, and Meyer,
230 Weiss & Co., hold pledges of the Crescent City National Bank?
A. I don't think they did in fact I think their bills have been paid by the Citizens' Bank.
Q. Then they have ceased to be debts?
A. I claim them debts yet; I am proceeding against them, or some of them, as I proceeded against the Citizens' Bank and others.
Q. What was the basis of your proceeding against them and the Citizens' Bank was it to make them surrender the assets that they held?
A. Yes, sir; the same as the Citizen's Bank.
Q. Then, as I understand you, R. A. Curd & Co., the Hibernia Bank, and Meyer, Weiss & Co. claim to hold as pledges, the assets of the bank?
A. Yes, sir.
Q. You do not recognize their pledges, and are proceeding to recover them?
A. Yes, sir; on the same ground as I did against the Citizens' Bank,
Q. They claim to apply the proceeds of their pledges to the payment of their debts?
A. Yes, sir; but I do not recognize it.
Q. But if they hold on to these pledges, they will not be creditors?
A. That would have to be decided by the court.
231 Q. But with reference to the amount pledged, the assets are sufficient to pay their debts?
A. Yes, sir.
Q. If, then, there is deducted from $721,424.79 the debts referred to and claimed of R. A. Curd & Co., the Hibernia Bank, and Meyer, Weiss & Co., the liabilities of the bank would be reduced that much?
A. Just that much.
Q. State what is the equivalent in currency of £2,100 due R. A. Curd & Co., £1,000 due the Hibernia Bank, and £4,000 due Meyer, Weiss & Co.
A. It depends on the rate of exchange. I have it on the books.
Q. What was its equivalent at the time of the failure of the bank?
A. I don't know; but I think the amount of Meyer, Weiss & Co. was $21,000.
(Witness being asked what was the equivalent in our currency of the debts claimed to be due by the Crescent City Bank to R. A. Curd & Co., the Hibernia Bank, and Meyer, Weiss & Co., states that it would be about $38,319.13.)
Q. You are now prosecuting a suit against the receiver of De Lizardi & Co. for the assets of the Crescent City National
232 Bank?
A. Yes, sir; I am so informed by my attorneys; but that they have not much prospect of success.
Q. These assets are now in the hands of the receiver of De Lizardi & Co.?
A. Yes, sir.
Q. What is the value of these assets?
A. £9,200.
Q. What is the equivalent of £9,200 in our currency?
A. I think about $50,000.

Q. These are assets of the Crescent City National Bank, remitted by the bank to De Lizardi & Co.?

A. Yes, sir.

Q. Intended to be applied to pay the bills upon which the Crescent City National Bank was liable?

A. Yes, sir.

Q. Now, De Lizardi & Co., instead of applying these assets to the payment of the bills on which the Crescent City National Bank was liable, the receiver of the firm of De Lizardi & Co. is now holding them?

A. Yes, sir.

Q. These bills, to cover which the £9,200 were remitted, are also included in this amount of $721,424.79?

233 A. They are.

Q. The dividends paid by you to the creditors of the Crescent City National Bank up to the present time amount to $383,189.55, leaving a balance to be paid of $338,235.34?

A. Yes, sir; exclusive of interest.

Q, This De Lizardi plantation is an asset of the Crescent City National Bank?

A. That was brought in by money disbursed by the bank for the purpose of securing an overdraft of De Lizardi & Co. for $20,000.

Q. But still it is an asset of the Crescent City National Bank?

A. Yes, sir; but I am $4,000 out by it.

Q. Where is it situated?

A. About nineteen miles below the city.

Q. Is it a sugar plantation?

A. Yes, sir; but not now cultivated.

Q. How many acres?

A. Sixteen hundred (1,600) arpents; but the bank only owns a two-third interest. The bank has disbursed so much money on that plantation that I don't expect to get more than my money back.

Q. Is there now any demand of those who claimed against the bank, other claims besides those of R. A. Curd & Co., the Hibernia Bank, and Meyer, Weis & Co.?

234 A. Yes, sir; there are some others due depositers.

Q. I want to know whether among the unproved claims there are any other creditors who hold pledges?

A. No, sir.

Q. None others than R. A. Curd & Co., the Hibernia Bank, and Meyer, Weiss & Co.?

A. That is all.

FRANK F. CASE.

Subscribed and sworn before me January 28th, 1876.

(Sig.) F. A. WOOLFLEY,
Special Examiner.

M'r Beckwith, on behalf of complainant, objects to all of the above testimony as not being pertinent to the issue in the case.

After which the meeting was adjourned to Saturday, 29th inst., at 3 o'clock p. m.

NEW ORLEANS, *Thursday, January 20th*, 1876,
at seven o'clock p. m.

FRANK F. CASE, REC'R OF THE CRESCENT City National Bank of New Orleans,
vs.
HENRY ABRAHAM ET ALS. } No. 7261.

235 The examination was resumed this evening on behalf of the Germania National Bank, defendant.

Present, J. D. Rouse, esq., solicitor for complainant; Cha's F. Buck, esq., for Germania Bank, defendant.

It is admitted that the Germania National Bank is an association organized under the provisions of the act of Congress, now called by legislative enactment the national bank act.

H. ROEHL, a witness produced, sworn, examined, on behalf of the Germania National Bank, defendant, deposes and says:

By M'r Buck, for defendant:

Q. You are an employee of the Germania National Bank?

A. Yes, sir; cashier.

Q. Were you cashier during the month of December, 1872?

A. Yes, sir.

Q. As cashier of that bank have you any knowledge of the circumstances under which the bank was made to appear as the transferee of certain stock, one hundred shares of the Crescent City National

236 Bank?

A. The stock was pledged to the Germania Bank to secure a note of Phelps, McCullough & Co.

Q. Will you look at this note with protest annexed to it, and state if that is the note?

A. Yes, sir; it is.

(M'r Buck, for defendant, offers the note and protest in evidence, which is objected to by M'r Rouse, for complainant, as irrelevant.)

Q. Was there a written contract of pledge executed between Phelps, McCullough & Co. and the bank?

A. Yes, sir.

Q. Pledging these one hundred shares of stock to the Germania Bank to secure the payment of that note?

A. Yes, sir.

Q. Look at that document and see if that is the contract of pledge?

A. That is the document.

Q. And the signature of M'r Edgar Nott?

A. Yes, sir.

(Defendants offer the contract of pledge in evidence, marked in ink "C."

Q. You had the transfer executed and the pledge as cashier of the Germania Bank?

237 A. Yes, sir.

Q. You acted under the instructions of the officers of the bank?

A. Yes, sir.

Q. What was the purpose and object of that transfer?

(M'r Rouse, for complainant, objects to the question as immaterial.)

A. The reason of our transferring it was because Phelps, McCullough & Co. did not pay their note, and when such is the case, or when a house

fails, or suspends, we are in the habit of always making these transfers in order to avoid any seizure on the part of the other creditors.

Q. To secure yourselves?

A. Yes, sir.

Q. On the property that is pledged?

A. Yes, sir.

Q. Did you know the pecuniary status of Phelps, McCullough & Co.?

A. Yes, sir; they failed.

Q. And the object of this transfer was merely to secure the interest of the bank in the shares of stock as against other creditors to the extent of the amount for which they had been pledged?

A. Exactly.

238 Q. Had the house of Phelps, McCullough & Co. failed at the time of the transfer of the stock?

A. Their note was going to protest; they failed to pay their note, which is equal to a failure.

Q. If that had not been the case would the Germania National Bank have the stock transferred to themselves?

A. No, sir.

Q. The stock was subsequently transferred that is mentioned in the answer to M'r W. A. Waldo?

A. Yes, sir.

Q. Will you state what the object and purpose of that transfer was?

A. The Germania National Bank is not in the habit of holding any bank stocks at all, and for that reason we transferred it to him.

Q. At the same interest?

A. Yes, sir.

Q. If the stock had realized any more than the interest to the bank you would have accounted for the same to Phelps, McCullough & Co.?

A. Yes, sir; certainly.

Q. Did the bank have this stock transferred to itself with the view of acquiring its ownership or for speculation or any other purpose?

A. No, sir.

239 Q. For no other purpose than as stated?

A. Yes, sir; to secure its loan.

Q. Did you hold in addition to this pledge from Phelps, McCullough & Co. a power of attorney giving you a power to transfer?

A. Yes, sir; it was surrendered to the bank.

Q. How long after you transferred the stock to the bank under your power to do so, by virtue of the pledge, was it before you transferred it to Waldo?

A. It was the next day I transferred it to Waldo, according to that book (the transfer-book of the Crescent City National Bank).

Q. And it was under that power transferred?

A. Yes, sir.

Q. Surrendering that power to the bank at the time the transfer was made?

A. Yes, sir.

Q. Was there ever a certificate of stock issued to the Germania Bank?

A. No, sir; not to my recollection.

Q. You are pretty sure that no such certificate was issued?

A. I am pretty sure.

240 Q. Do you know whether a certificate was issued to Waldo?

A. Yes, sir.

Cross-examined by M'r Rouse, for complainant:

Q. Why did you not transfer the stock to Waldo at once, acting under the power that you had to do so?

A. Because I think that transfer or power of attorney was made out authorizing me to transfer it to the Germania National Bank, and of course, the power of attorney being made out in that way, it could not be transferred to anybody else but the bank.

Q. Where is that power of attorney?

A. It was left with the bank.

Q. What bank?

A. The Crescent City National Bank, at the time it was transferred.

Q. Are you sure you possessed such a power?

A. Yes, sir.

Q. Are not these powers of attorney usually left blank, so far as the name of the transferee is concerned?

A. Sometimes they are, and sometimes they are not.

Q. Did not that power of attorney authorizing you to transfer it
241 to whom you saw fit?

A. Well, I don't know; I generally fill it up at the time the loan is made to the bank, and put the name of the bank; that is my habit.

Q. Had Waldo any interest whatever in the stock you transferred to him?

A. No, sir.

Q. He was in the employ of the bank at the time?

A. Yes, sir.

Q. Was there any understanding between the officers of the bank and Waldo that he should retransfer it at their request?

A. Yes, sir; that was the understanding.

Q. Did you not know at the time you transferred this stock to Waldo that the Crescent City National Bank was in financial discredit in New Orleans?

A. No, sir; the stock was below par.

Q. You say no?

A. Yes, sir; the stock was considerably below par; but at the time there was nothing about it.

Q. How much below par was the stock?

242 A. I think fifty per cent.

Q. Had you not heard that the bank lost very heavily by the failure of De Lizardi & Co.?

A. That I don't recollect; I don't know whether they had failed at the time.

Q. Did you not know at the time you transferred this stock to Waldo that the Crescent City National Bank was generally reputed to be in insolvent circumstances?

A. No, sir; that first answer that I made answers that.

Q. Did you not know at the time you transferred that stock to Waldo that by the failure of De Lizardi & Co., of London, the Crescent City National Bank had been badly crippled?

A. No, sir.

Q. Had you heard of the failure of De Lizardi & Co., of London?

A. I don't recollect any more whether it was before this transfer or after.

Q. How long was it after this transfer that the Crescent City National Bank failed?

A. I think ten or fifteen days.

Q. Suppose it was only two days, what recollection would you have then of the failure of De Lizardi & Co.?

A. How?

243 Q. Suppose the Crescent City National Bank failed three days after you transferred this stock, what recollection would you have of the failure of De Lizardi & Co.?

A. But I am satisfied that it was not so made.

Q. But if such should be the fact, what is your opinion as to the time you heard of the failure of De Lizardi & Co., if the bank failed three days after supposing; what is your recollection as to the time that De Lizardi & Co. failed?

A. I don't know.

Q. Were you in the habit of buying the stock of the Crescent City National Bank?

A. No, sir.

Q. Do you know of any sales of the stock of the Crescent City National Bank after the failure of De Lizardi & Co.?

A. I heard of a sale, yes, sir; at thirty-five.

Q. Do you know of any?

A. No, sir.

Q. You heard of a sale, at what price?

A. Thirty-five I think.

Q. When; before or after this tranfer?

A. After the transfer, to the best of my recollection.

244 Q. Do you not know that for ten days before the actual failure or suspension of payment by the Crescent City National Bank that its stock was worthless in the market?

A. I do not know that; I only know the facts that I stated here, at the time that this transfer was made the stock was supposed to be worth $40 or $50 on the market.

Q. It was supposed to be; but do you know of any sales at any price?

A. Well, I heard of sales after this transfer was made.

Q. You state you heard of sales; state now what sales, by whom, and to whom.

A. There was a sale made by—I don't know the seller, but I know the broker, and the buyer was Mummy, Shroeder & Co.; that was after the transfer.

Q. After the transfer that you made?

A. Yes, sir; I don't know how many shares.

Q. It was sold by Alexander Bienvenue, the broker?

A. Yes, sir.

Q. Was that the stock of C. M. Soria?

A. I don't know what stock it was.

245 Q. What knowledge had you at that time, as cashier of the Germania National Bank, of the standing of banks generally in the city of New Orleans?

A. From what I heard from the brokers, merchants, and so forth.

Q. Did you have a general knowledge of the condition and reputation for solvency?

A. Yes, sir.

Q. Was that knowledge, as tested by subsequent events, a pretty correct one?

A. Yes, sir.

Q. Have you any means of refreshing your recollection as to the time when De Lizardi & Co., of London, failed?

A. Well, I could perhaps find out by referring to papers, or inquiring of persons generally.

Q. As cashier of one of the leading banks in the city, did you not know as early as bankers generally do the fact of the failure?

A. Yes, sir.

Q. As cashier of such a bank, did you not know also that by the failure of De Lizardi & Co., of London, the Crescent City National Bank had suffered a very great loss?

A. Well, I did not know the extent of the loss.

246 Q. Did you not know that said bank was generally reputed to have suffered very heavily by the failure?

A. I heard so afterwards.

Q. You pretend to say that you did not hear it immediately after the general knowledge in the community of the failure of De Lizardi & Co., of London?

A. I did know at the end of the month.

Q. Do you mean to say that if De Lizardi & Co., of London, failed a whole month before the failure of the Crescent City National Bank, that you did not know until after the failure of the Crescent City National Bank that the Crescent City Bank had suffered heavily by the failure of De Lizardi & Co., of London.?

A. After hearing of the failure of De Lizardi & Co., of London, I heard that they were owing the bank largely, but I did not know the extent; I had no idea that they were indebted to such an extent as I heard afterwards.

Q. What was the market price of the stock of the Crescent City National Bank before the failure of De Lizardi & Co., of London?

A. How long before?

Q. Any time before ten days—a week, or a month.

247 A. I don't know exactly without referring to the quotations.

Q. About what?

A. I have no idea.

Q. Did it approach par?

A. It approached par a few months before that time.

Q. Did it sell as high as eighty or ninety dollars a share?

A. Yes, sir.

Q. And afterwards it sold at thirty-five dollars?

A. Yes, sir.

Q. And yet you had no suspicion at the time you transferred this stock to Waldo that the Crescent City National Bank was insolvent?

A. No, sir.

Q. You had no suspicions?

A. No, sir; not that the bank was insolvent.

Q. You had no suspicion that it was going to suspend?

A. No, sir.

Q. You believed that it was able to go on and carry on its business operations for an indefinite time in the future?

A. Yes, sir.

Q. Did you see its returns to the clearing-house?

248 A. There was no clearing-house existing at the time.

Q. You are certain that there was no organization called the clearing-house at that time?

A. I am certain of it.

Q. If there had been such an organization in the city of New Orleans, would you have seen the returns made by the different banks, or a schedule of them?

A. Yes, sir; I had access.

Q. You received the weekly compilation of the returns of the different banks?

A. We had the privilege of getting and seeing these things.

Q. You have seen them frequently?

A. Yes, sir.

Q. Then if it turns out that the clearing-house had been organized prior to that time, during the existence of the Crescent City National Bank, it is probable that you were cognizant of its reports?

A. Yes, sir.

Q. Are you as certain of these facts as you are of the others that you have testified to to-night?

A. Yes, sir.

Q. Was not the opinion of the officers of the Germania National
249 Bank on the 10th day of March, 1873, at and before the time of the transfer of this stock to Waldo, that the Crescent City National Bank was in danger of insolvency?

A. No, sir.

Q. Had not the matter been discussed by the officers?

A. No, sir.

Q. Was not the transfer made with the view to avoid the liability under the national bank act, in case of such suspension?

A. Well, not exactly that way. We simply transferred it because we are not in the habit of holding any bank stock. We did not want to have any bank stock in our name; that was the object.

Q. You were well aware of the fact that the stockholders of national banks were liable to contribute to the payment of their debts in cases of insolvency?

A. Yes, sir.

Q. Did you not have that in contemplation at the time of this transfer?

A. That may be one of the reasons why we did not want to own any stock.

Q. Was not that one of the principal motives of this transfer to Waldo?

A. Yes, sir.

Re-examined by M'r Buck, for defendant:

250 Q. In stating that you had that motive, had you any fear of the failure of the Crescent City National Bank?

A. No, sir.

Q. It was the simple fact that the bank did not wish to hold the stock in their own name, as it was not a business they were in the habit of dealing, and did not want to have the responsibility?

A. Yes, sir.

Q. And the transfer was mad'-to Waldo partly for that reason and purpose?

A. Yes, sir.

Q. And for the reason that Waldo received no greater interest than the Germania National Bank had at the time?

A. That is all.

(Signed) HERM. ROEHL.

Subscribed and sworn before me January 20th, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

JULES CASSARD, a witness produced, sworn, and examined on behalf of defendant, deposes and says:

By M'r Buck, for defendant, the Germania National Bank:

Q. You are vice-president of the Germania National Bank?

251 A. Yes, sir.

Q. You were connected with the bank in that capacity in 1872?

A. Yes, sir.

Q. At the time this note was discounted for Phelps, McCullough & Co., and this pledge taken that has been offered in evidence?

A. Yes, sir.

Q. Have you any knowledge of the transfer of the stock pledged in that transaction to the bank, what was the transfer amounting to, and for what reason was it made?

A. That transfer?

Q. Yes, that transfer of the stock that was pledged under this act, already offered in evidence?

A. The transfer of the stock was not made for any consideration. We had the stock in pledge to guarantee the payment of a note from these gentlemen.

Q. The note which has been exhibited and offered in evidence?

A. Ye', sir.

Q. Did the Germania National Bank ever acquire the ownership of that stock as a purchaser?

A. No, sir.

Q. You only held them as pledges to secure a debt?

A. Yes, sir.

252 Q. Yet on the books of the Crescent City National Bank it appears that the stock was transferred to the Germania National Bank?

A. Yes, sir.

Q. What was the object of that apparent transfer; for what purpose was it made?

A. It is usual in most of the banks, and principally in ours, that when a note goes to protest, to protect the bank by going to the corporation on which we hold the certificate and transfer the stock to ourselves for the time being.

Q. Holding yourself responsible to the owner for any excess upon the claim you have that may be realized on the documents pledged?

A. Yes, sir.

Q. Do you know anything of the transfer on the part of the bank to M'r Waldo?

A. No, sir; it was done by M'r Roehl.

Q. You know nothing about it?

A. I know it was done.

Q. Was that done on the part of the Germania National Bank to avoid any liability as a stockholder in the Crescent City National Bank?

A. No, sir; not at all.

Q. Especially in contemplation of any known prospect of failure on the part of the Crescent City National Bank?

253 A. If we had known that, we would have sold the stock at once. That is proof that we acted in perfect good faith.

Q. The debt which is evidenced by this note was actually due to the Germania National Bank by Phelps, McCullough & Co?

A. Yes, sir.

Cross-examined by M'r Rouse, for complainant:

Q. You say you would have sold the stock at once, if you had expected the insolvency of the Crescent City National Bank?

A. Yes, sir.

Q. Do you think you could have sold it at that time, within two days of its failure?

A. Yes, sir.

Q. For how much?

A. The stock was quoted for thirty five and forty cents.

Q. By whom?

A. By the newspapers and brokers.

Q. Do you not know that both newspapers and brokers make fictitious quotations of stock?

A. Well, they do, I suppose sometimes, but I was told by one of the brokers.

Q. You say that you did not transfer this stock, because you
254 had reason to beleive that the Crescent City National Bank was insolvent at the time?

A. Yes, sir.

Q. Did you not believe it was insolvent at the time the transfer was made?

A. No, sir.

Q. Did you not know it was so generally reputed in the city of New Orleans?

A. No, sir; I knew the bank was not in as high repute as most of the banks were, but I did not know that anything was wrong; she had not the same credit as the Canal Bank, or some other bank.

Q. Do you remember when it was first known in the city of New Orleans that De Lizardi & Co., of London, failed?

A. I think it was eight or ten days after that transaction.

Q. After what transaction?

A. The transfer of that stock.

Q. Do you think this stock was transferred before the failure of De Lizardi & Co. was known in New Orleans?

A. I think so.

Q. Then if it should be a fact that De Lizardi & Co., of London, failed a whole month before, and that fact had been generally known in the city of New Orleans, both among business men, merchants, and in all the bank parlors nearly a month before that transfer, do you
255 think you would not have heard of it?

A. Even if I heard of it, how could I know the extent of the liabilities of De Lizardi & Co. in that bank?

Q. Do you not know that after the failure of De Lizardi & Co., of London, was known in New Orleans, the Crescent City National Bank, was greatly discredited; that its funds were rapidly withdrawn; that its exchange was no longer saleable, and that it was asking assistance from other banks?

A. I never heard of it.

Q. Had you generally known the reputation of the other banks in the city of New Orleans?

A. I did to a certain extent, and I would remark that the Crescent City National Bank was doing business in foreign exchange, and this kind of business we did not do at our bank.

Q. Do you not know that it lost very heavily in deposits after the failure of De Lizardi & Co., of London?

A. No, sir; not until after.

Q. You never heard of it until after its failure?

A. No, sir.

Q. You never knew of its failure until after it failed?

256 A. No, sir.

Q. You never heard rumors that it was in danger?

A. I never listen to rumors. I may have heard them, but I did not listen.

Q. If it was a general belief, and a matter of common talk in bank circles, that the Crescent City National Bank was in failing circumtances, you paid no attention to such a rumor, and know nothing of its reputed insolvency?

A. It depends upon from where it comes. If a business or a reliable man tells me, I will listen to him, but I will not listen to street rumors.

Q. I ask you nothing about street rumors, but was it not generally known in bank circles that the Crescent City National Bank was about to fail; and, if so, would you have learned it?

A. Yes, sir; I would.

Q. And you never heard of it?

A. No, sir.

Q. Did you that the Crescent City National Bank obtained assistance to the amount of $200,000 from the Citizens' Bank in the month of February?

A. No, sir.

Q. You never knew that before?

A. No, sir.

257 Q. Did you not know that the Crescent City National Bank had obtained large assistance from the State National Bank, in the month of February?

A. No, sir.

Q. You never heard that the same bank obtained great assistance from Duncan, Sherman & Co., in the month of February, 1873?

A. No, sir.

Q. You never heard that they applied to C. Cavaroc & Son for assistance in the month of February, 1873?

A. No, sir.

Q. You never heard that the Crescent City National Bank applied for assistance to others, and was refused?

A. No, sir; they never applied to us.

Q. You never heard of them asking assistance from anybody?

A. No, sir.

Q. And yet your bank was a large institution, doing a large business in the city of New Orleans?

A. Yes, sir; my affairs was to attend to my bank. I never heard that the Crescent City National Bank made application to any of these banks. They never came near us.

Q. You say it is your custom to transfer the stocks that have been pledged to you?

258 A. Yes, sir.

Q. What stocks were transferred to you as pledges in March, 1873?

A. I do not know.

Q. What stocks have been transferred to you at any time?

A. Well, we done it lately in the insurance association.

Q. To whom did you make the transfer?

A. To ourselves.

Q. Do you still hold that stock in the name of the Germania Bank?

A. No, sir; the insurance association declined to make the transfer to us.

Q. Then you did not make the transfer?

A. No, sir, but we have attempted; we have taken action.

Q. You misunderstood my question. I ask you, where stocks have been forfeited to you by the protest of the note on which they were pledged, in what instance have you, on transferring these stocks to the Germania Bank, transferred them to your clerks?

A. We never transferred them to our clerks.

Q. Then this is the sole instance in which you made such a transfer?

A. We never had occasion to transfer them.

Q. You never had stocks pledged to you as collateral that were forfeited?

259 A. Except the insurance company.

Q. That is the only instance that occurred in the Germania Bank?

A. Yes, sir.

Q. And yet you say you were in the habit of transferring such stocks to your clerks?

A. It is the rule in the bank.

Q. Is that rule in the minutes or by-laws?

A. No, sir.

Q. How can it be a rule if this is the only instance in which it has been applied?

A. Because it is the only instance that occurred.

Q. But there is nothing in the minutes or the by-laws to show that it is the rule of the bank?

A. It is only a rule of the officers in such cases.

Q. There is no record of it?

A. No, sir; there is none needed.

Q. When was that rule made?

A. Since the organization of the bank.

Q. And this is the only case where it was applied?

A. Yes, sir.

Q. Were you an officer at the organization of the bank?

260 A. Yes, sir; at the reorganization of the bank I was cashier.

Q. But the organization of the bank?

A. I was not connected with the bank. It was the City National Bank, but since it changed its name I have been connected with the bank.

Re examined by M'r Buck, for defendant:

Q. You state that it is a rule to transfer; you mean it is habit of business?

A. Yes, sir. That is the understanding at the bank whenever there is anything of the kind, and that is the only paper protested that we had of that description.

(Signed) JULES CASSARD.

Subscribed and sworn before me January 20th, 1876.

(Signed) F. A. WOOLFLEY.
Special Examiner.

EDGAR NOTT, a witness produced, sworn, and examined on behalf of the Germania National Bank, defendant, deposes and says:

By M'r Buck, for defendant:

261 Q. You have been a member of the firm of Phelps, McCullough & Co.?

A. Yes, sir.

Q. You signed this pledge individually given to the Germania National Bank?

A. Yes, sir.

Q. And also the firm-name?

A. Yes, sir.

Q. What was the object of your signing individually besides in the name of the firm?

A. Because on this pledge you will see one hundred shares of the Crescent City National Bank stock, fifty shares of the Mutual National Bank stock, five of which belonged to me individually. That explains my personal signature.

Q. What was the act of pledge executed for?

A. To secure a note for $14,000.

Q. Is this the note, marked "C"?

A. Yes, sir; signed by myself as a member of the firm.

Q. At the time these shares of stock were pledged, were they worth enough to cover the amount of your note?

A. Well, I should think so, or the parties would not have taken such a pledge.

262 Q. If the Germania National Bank, or any part of it, or held it under the power which I presume was given to it, or was there a power given to the bank to transfer the stock?

A. Yes, sir.

Q. If the bank had made such a transfer and realized more than the amount of your note, would you not look to them for the surplus?

(M'r Rouse, for complainant, objects to the question as irrelevant.)

A. Certainly.

Q. Do you know what has become of the fifty-five shares of the Mutual National Bank stock?

(M'r Rouse objects to the question as irrelevant.)

A. It has been sold and placed to the credit of the note.

Q. You never, either individually or in the name of the firm, made a full and complete transfer of the stock to the Germania Bank?

A. Not more than the blank accompanying the pledge.

Q. To secure the payment of this note?

A. Yes, sir.

Q. Have you ever applied to the bank to ascertain how much had been realized upon these various stocks upon account of your

263 note and applied to the partial payment of it?

A. I had a conversation with M'r Cassard once, and he said there was nothing done, but that a credit was given for the Mutual National Bank stock, which item he furnished me.

(Signed) EDGAR NOTT.

Subscribed and sworn before me January 20th, 1876.

(Signed) F. A. WOOLFLEY.
Special Examiner.

H. ROEHL recalled by M'r Buck for defendant:

Q. Has the Germania National Bank realized anything on this stock of the Crescent City National Bank at any time?

A. No, sir.

(Signed) HERM ROEHL.

Subscribed and sworn before me January 20, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

H. ROEHL recalled by M'r Buck, for defendant:

Q. Has the Germania National Bank realized anything on this stock of the Crescent City National Bank at any time?

A. No, sir.

(Signed) HERM ROEHL.

Subscribed and sworn before me January 20, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

JULES CASSARD recalled by M'r Buck, for defendant:

Q. Has the Germania National Bank realized anything on this stock of the Crescent City National Bank at any time?

A. No, sir; not a cent.

264 (Signed) JULES CASSARD.

Subscribed & sworn before me Jan'y 20th, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

After which the examination was adjourned to Friday, January 21st, 1876, at three o'clock p. m.

NEW ORLEANS, *Saturday, Feb'ry 5th*, 1876.

FRANK F. CASE, RECEIVER, ETC., *vs.* HENRY ABRAHAM ET ALS. } No. 7261.

General testimony on behalf of the defendants resumed this day.

Present, J. D. Rouse and J. R. Beckwith, esq'r's, solicitors for complainant.

E. B. Kruttschnitt, esq., solicitor for Alcus, Shcherk & Autey, and Sam'l Freidlander, defendants.

FRANK F. CASE (receiver), a witness, recalled and examined on behalf of defendants.

By M'r Kruttschnitt, for defendants:

Q. I understood you the other day in giving your account of the assets of the bank to give the amount of bills receivable @ $12,000; is that correct?

265 A. With this exception of $12,467.91; that I consider good and collectable.

Q. What is the total amount of bills receivable now on hand?

A. There remain on hand about $142,041.55; some of these are in judgment, but still carried on the books as bills receivable.

Q. Are there not some assets also in the shape of overdrafts?

A. Yes, sir.

Q. How much?

A. $89,804.89.

Q. There are also $6,400 cash in the Treasury?

A. Yes, sir; as near as I can come to it.

Q. The total amount of collections you made as receiver are $423,000, in round numbers?

A. I have not collected all that; I modify my explanation by saying that a great deal was collected by the Comptroller.

Q. But that is the amount which has come into the hands of the re-

ceiver or Comptroller, and collected either by you or by the Comptroller?

A. There are $412,899.79 collected, and not $423,000.

Q. Are you sure that is correct?

266 A. Yes, sir; there has been a few thousands collected since, $8,000 or $10,000, which would cover that amount, but only $412,899.79 was collected up to the first of October last.

Q. What *are* the liabilities which are yet unproved consist of?

A. Bills of exchange, deposits, and old circulation.

Q. Chiefly bills of exchange?

A. Yes, sir.

Q. In the first published statement which has been offered in evidence is the item, "Due holders of sterling bills, per schedule H, $604,459.25"; will you state whether all these sterling bills do or do not consist of bills drawn by the bank on the firm of De Lizardi & Co., of London?

A. Yes, sir.

Q. That is the shape of all these bills?

A. Yes, sir.

(Signed) F. F. CASE.

Subscribed and sworn before me February 5th, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

Mess'rs Rouse & Beckwith, solicitors for complainants, objected to all of the foregoing interrogatories propounded to this witness at the time they were so propounded, but for convenience the objection

267 is now stated at the end of his examination, the objection being that the interrogatories call for irrelevant and immaterial testimony.

After which the examination was continued to Monday, February 7th, 1876, at seven o'clock p. m.

NEW ORLEANS, *February 7th*, 1876.

Examination resumed, pursuant to adjournment, on behalf of defendants.

Present, E. B. Kruttschnitt, for Aleus, Scherck & Autey and S. Friedlander, defendants; J. D. Rouse, for complainant.

(Defendants offer in evidence a transcript from the stock ledger showing the names of the stockholders and the number of shares held by each when the bank went into the hands of the receiver on the 17th March, 1873, marked "Exhibit Defendants, C."

Complainant objects thereto.)

Defendants here close their testimony.

268 UNITED STATES OF AMERICA,
District of Louisiana, ss:

I, Francis A. Woolfley, special examiner, duly appointed by the circuit court of the United States for the district of Louisiana to take the testimony of Frank F. Case, Emory Clapp, J. J. Gediere, John Clifton, H. Roehl, Jules Cassard, Edgar Nott, W. C. Lipscomb, James A. Vignaud, & A. A. Ruch, witnesses on the part of the defendants, do hereby certify that on the days named in the depositions hereto annexed I was attended at the office of the clerk of said circuit court, in the city of New Orleans, by the counsel and witnesses aforesaid; that the witnesses were duly sworn and examined, and the depositions were reduced to

writing and read to the witnesses, and by them subscribed in my presence.

And that Exhibits Clapp A, Clapp B (Germania A, Germania B, Germania C (these exhibits, A, B, & C, will be found transcribed on pages of this transcript), Defendants, B (Shumway A, Shumway B), and Defendants, C, were introduced in evidence in such cause during the taking of said depositions.

New Orleans, March 31st, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

269 EXHIBIT DEFENDANTS, B.—*Offered in evidence by defendants January 26th*, 1876.

U. S. circuit court, district of Louisiana.

FRANK F. CASE, REC'R OF THE CRESCENT CITY National Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

[Extract from the Republican, a newspaper.]

CRESCENT CITY NATIONAL BANK.

General statement of assets and liabilities—Nearly $200,000 deficiency—Long paper of the directors—Transfer of discounted paper—A question to be judicially settled—Paying teller's deficit.

We present to the readers of the Republican this morning a copy of the general statement of Colonel Charles Case, receiver of the Crescent City National Bank, to the Comptroller of the Currency at Washington:

RECEIVER'S OFFICE,
CRESCENT CITY NATIONAL BANK OF NEW ORLEANS,
New Orleans, March 28th, 1873.

Hon. JOHN JAY KNOX,
Controller of Currency, Washington, D. C.:

DEAR SIR: I am at this date able to forward herewith a general statement of the assets and liabilities of the Crescent City National Bank of New Orleans, with schedules from A to I, inclusive,
270 showing the particulars upon which the general statement is based.

Taking the assets at their nominal values and amounts, and deducting from the liabilities the capital stock, and it will appear that the assets exceed the liabilities by the sum of $43,047.33, but the explanations to be seen on the general statement of assets show that they are only good for $929,213.97, thus leaving a deficiency of $187,537.49.

I think my estimate of the assets is full as high and favorable as facts will warrant. The probability is that they will be less rather than more than the sum $929,213.97. As to the discounted paper in schedule A, I may remark that the letters G, B, and D stand respectively for the words good, bad, & doubtful, and the paper was thus marked by the directors at a meeting shortly prior to my first examination of the bank. My nephew, F. F. Case, is better acquainted than I am with the business houses of the city, and is able to verify the judgment of the di-

rectors. You will notice that considerable of this paper has a long time to run, some of it not falling due until March, 1874, and part of this being the paper of the directors of the bank. May have something more to say on this subject hereafter.

271 In this connection your attention is also called to the several items of discounted paper transferred from portfolio to sundry banks and bankers, and amounting in the aggregate to $226,347.69. It appears that these several parties had bought the sterling bills of the Crescent City National Bank upon the house of De Lizardi & Co., of London, and about the twenty-sixth and twenty-seventh of February last, having learned of the failure of the latter house, and anticipating that the bills they had purchased would come back dishonored, they called upon the Crescent City Bank for some security against their expected losses, and the president, in order to secure them, transferred discounted paper from the portfolio to the amount charged to the several parties. In fact, the Citizens' Bank took a transfer of discounted paper to the amount of $43,000 more than the general statement shows, and for which the Crescent City Bank received currency, which, as I am told, was paid out to depositors.

Whether it was in the power of the Crescent City Bank thus to attempt to secure the holders of its sterling bills to the amount of 226,347.69, leaving holders of the same kind of paper to nearly

272 double the amount, and all other creditors, unsecured, is one of the important questions which meet me at the commencement of my duties as receiver. Probably it will have to be settled judicially. It is understood that the paper thus transferred as above was of the shortest and best in the portfolio.

Accompanying Schedule H is also a list of bills transmitted to London to cover the sterling bills specified in the schedule, but my present advices are that the house of De Lizardi & Co., instead of applying the bills as directed, appropriated their proceeds to their own use before failure, thus leaving the sterling bills of this bank to the amount of $604,259.95 entirely unprovided for.

Whether the assets of the house of De Lizardi & Co. are worth anything is at least problematical. My best information is that the failure was a very disastrous one, little better than a total wreck.

The bank-books show that soon after the condition of the bank became critical, a very lively business was done, or attempted to be done, in the transfer of its stock. I have already written you on this subject.

I have noted on Schedule I of the stockholders the date of some of these recent transfers in parenthesis. A notic'able feature as to

273 many of them is that they are transfers to persons who have not been bankers or dealers in stock of any kind, or, perhaps, able to spare the capital to invest in such hazards.

The directors of the bank at date of my first examination were E. H. Summers (also president), Emory Clapp, L. H. Gardner, who resigned about that time, having transferred his stock, Geo. W. Hynson, C. M. Soria, A. Stewart, and M. A. De Lizardi, who also resigned about the date of the failure of the London house, or shortly after.

A reference to Schedule A and F will show the indebtedness of four of these gentlemen to the bank. In one instance there is a heavy overdraft, and the bills discounted are with one or two exceptions decidedly long paper, some of them having nearly one year yet to run.

I am unable to add anything to what has heretofore been said as to the shortage of the paying teller's cash. While the examination was progressing, he admitted his deficit to be $15,059. So far as known

nothing has come to light to better this statement, and there is some reason to fear that it may turn out worse.

Very respectfully, your obedient servant,

(Signed) CHARLES CASE.

Receiver of Crescent City National Bank, New Orleans.

274 *General statement of assets and liabilities of the Crescent City National Bank of New Orleans, Louisiana, March 19, 1873 (C. Case, receiver).*

ASSETS.

Bills discounted per Schedule A, viz:			
Estimated as good		78,463 39	
Estimated as doubtful		35,810 52	
Estimated as bad		62,992 26	
			177,266 17
Past-due notes per Schedule B, considered worthless			6,350 99
Demand-loans per Schedule C:			
Good		7,500 00	
Bad		17,604 64	
			25,104 64
Bills receivable per Schedule D, probably not worth over twenty per cent., equal to, say, $8,502.68			42,513 44
Domestic exchange per Schedule E, being $5,500, less a credit of 183.48, good			5,316 52
Over-drafts per Schedule F, of which not over $20,000 is good			93,488 85
United States bonds to secure circulation			500,000 00
Estimated premium on United States bonds as above			59,382 00
Thirty-eight shares Mechanics and Traders' Bank stock (par value $50 per share), worth $28.50 per share, $1,083			1,900 00
Twenty shares Pacific and Atlantic Telegraph Company stock (no present value)			500 00
275 Real estate, cost $15,000, now estimated as good for			7,500 00
Furniture and fixtures, cost $5,452, now estimated as worth			3,726 00
Transfers of discounted paper from portfolio, viz:			
To Charles Cavaroc, president New Orleans National Banking Association	$16,666 66		
To Duncan, Sherman & Co	30,153 24		
To State National Bank, New Orleans	29,701 62		
To Citizens' Bank, New Orleans	149,826 17		
			226,347 69
London Joint-Stock Bank			5,637 22
Cash items, viz:			
Legal tenders and currency	2,452 00		
Checks on local banks	3,059 17		
Checks on assistant treasurer and postmaster at New Orleans	244 10		
			5,755 27
Total			$1,159,798 79
Nominal excess of liabilities over assets			456,952 67
Total			$1,616,751 46

LIABILITIES.

Capital stock	500,000 00	
Circulation	450,000 00	
		950,000 00
Due individual depositors, as per Schedule G		42,474 28
Interest on deposits		2,704 23
To holders of sterling bills per Schedule H		604,959 25
276 To National Bank of Republic, New York		653 62
To People's Bank of Kentucky, Louisville, Kentucky		2,086 60

To Manufacturers' Bank, Louisville, Kentucky	815 96
To Holly Springs Savings and Insurance Company	1,416 99
To Bank of Madison, Jackson, Tennessee	22 95
To Chattahoochee National Bank	702 34
To Bank of Oxford, Oxford, Mississippi	416 81
To Kentucky National Bank	2,103 02
To L. Levenson & Co., New York	1,196 00
To R. Keller	200 00
Total	$1,616,751 46

EXHIBIT DEFENDANTS, C.—*Offered in evidence by defendants generally, February 7th, 1876.*

Transcript from the stock-ledgers of the Crescent City National Bank, showing the names of the stockholders, and the number of shares held by each when the bank went into the hands of the receiver, on the 17th March, 1873.

SERIES A.

Name of stockholder:	No. of shares.
Henry Abraham	5
M'r's Adler	3
J. B. Alexander	70
Association for the Relief of Jewish Widows and Orphans, N. O	2
277 Anna Marcia Baker	3
James Barnwell	2
James S. Brander, ex'r	10
Jose Barba	2
Nehemia Bass	1 2/5
Jesse R. Bell	30
T. Brierre	17
F. E. Bridges	5
M'r's Jane Bogart	3
Cicero Brown	25
R. Southgate Boyd	2
W'm Brown	31
R. A. Bourk	4
D. S. Bryon	22
M'r's V. W. Burbridge	10
E. J. Cavilier	25
Emily Clapp	5
M'r's M. W. Cabel	1 1/5
Crescent Mutual Insurance Company	130
Mary A. Cooley	2
Cobb, Doehonde & Co	5
W. A. Cromwell	3
Tho's Cooley	4
M'r's A. A. Draper	2
Geo. W. Dessommes	25
Jos. S. Doane	80
W'm P. Ellison	10
Wido' L. Fabio	8
Samuel Friedlander	26
Julius Fox	20
Placide Forstall	80

278	C. H. Forster & Co	24
	George Graham	1
	O. B. Graham	3
	W'm Gregory	1
	M'r's D. Goodman	2
	E. J. Hart & Co	2
	George Heation	13
	Hebrew Foreign Mission	15
	M. Hirsh	5
	E. B. Hogan	1
	George W. Hynson	11
	M'r's Paul Juge fils	12 1/5
	John F. Kranz	1
	Albert Kelly	30
	H. M. Klein	10
	P. H. Keenan	6
	F. Lacroix	20
	Lehman, Abram & Co	15
	Leaumont, Gabr	5
	E. M. Levi	17
	M. A. de Lizardi	226
	F. de Lizardi & Co	89
	W. C. Lipscomb	5
	M. A. de Lizardi & Co	20
	James McConnell	4
	W. H. McClelland	24
	Ja's McWilliams	18
	John McIntosh	2
	Aldin McLellan	6
	A. McRae, tutor of M. J. Speake	5
	A. McRae, " " M. J. Speake	5
279	H. S. McComb	250
	George McCoughn	6
	Meyer Weiss & Co	20
	William Maxwell	4
	Merchants' Insurance Co	5
	Minor Amelie Soniat	1/5
	Fred. Monosky	1
	James Murphy	7
	New Orleans Savings Institution	51
	Edward Newman	65
	Richard Nugent	14
	Bridget O'Neil	1 4/5
	J. B. Oliver	4
	O'Dowd & Sullivan	2
	Arthur Olliver	5
	A. R. Oppenheimer	5
	Mary R. Palms	5
	M'r's Kate M. Patton	6
	Fred. W. Parhan	10
	W. E. Pendleton	3
	John W. Price	5
	Pritchard & Bickham	75
	Ping & Bro's	1
	M'r's M. A. L. Raymond	2
	Rector, wardens & vestry of Trinity Church	6

	W. G. Robinson	10
	R. M. Sawyer	2
	J. A. Shakespeare	27
	A. W. Sanford	10
	W'm Stevens	10
	Andrew Stewart	5
280	Stevens & Seymour	12
	Arthur Sheiff	12
	Cha's B. Singleton	2
	Edw. Schirmer	3
	T. Soniat	4/5
	Sun Mutual Insurance Co	12
	M'r's J. Sutherland	3
	E. H. Summers	271 2/5
	M. Schuppert	1
	Samuel A. Shumway	19
	Sam'l M. Todd	2
	R. Thornhill	13
	Touro Infirmary	10
	T. Y. P. Tureman	1
	H. T. Vennard	5
	Jos. Villio	2
	George J. Vincent	8
	Henry Vorhaben	2
	J. J. Warren	4
	W. A. Waldo	24
	Jos. G. Warriner	37
	W. S. Wheeler	40
	B. Witherspoon	20
	Henrietta Wilson	2
	Elias Wolf	3

SERIES B.

	J. B. Alexander & Co	250
	Behan, Thorn & Co	10
	Emory Clapp	50
	Cohn & Seligman	10
	B. Davis	50
	Morris Dyer	40
281	Jos. S. Doane	25
	Richard Flower	30
	Julius Fox	50
	B. F. Leefe	100
	M. A. de Lizardi & Co	250
	M. A. de Lizardi	300
	Miguel Genaro de Lizardi	250
	Ed. Lubie	100
	McNeiley & Milburn	10
	Geo. McCoughan	94
	W'm Maxwell	10
	Mummy Schroeder	56
	Edward Newman	25
	W. Norcom	20
	A. Oppenheimer	25
	Peter O'Donnell	10

278	C. H. Forster & Co	24
	George Graham	1
	O. B. Graham	3
	W'm Gregory	1
	M'r's D. Goodman	2
	E. J. Hart & Co	2
	George Heation	13
	Hebrew Foreign Mission	15
	M. Hirsh	5
	E. B. Hogan	1
	George W. Hynson	11
	M'r's Paul Juge fils	12 1/5
	John F. Kranz	1
	Albert Kelly	30
	H. M. Klein	10
	P. H. Keenan	6
	F. Lacroix	20
	Lehman, Abram & Co	15
	Leaumont, Gabr	5
	E. M. Levi	17
	M. A. de Lizardi	226
	F. de Lizardi & Co	89
	W. C. Lipscomb	5
	M. A. de Lizardi & Co	20
	James McConnell	4
	W. H. McClelland	24
	Ja's McWilliams	18
	John McIntosh	2
	Aldin McLellan	6
	A. McRae, tutor of M. J. Speake	5
	A. McRae, " " M. J. Speake	5
279	H. S. McComb	250
	George McCoughn	6
	Meyer Weiss & Co	20
	William Maxwell	4
	Merchants' Insurance Co	5
	Minor Amelie Soniat	1/5
	Fred. Monosky	1
	James Murphy	7
	New Orleans Savings Institution	51
	Edward Newman	65
	Richard Nugent	14
	Bridget O'Neil	1 4/5
	J. B. Oliver	4
	O'Dowd & Sullivan	2
	Arthur Olliver	5
	A. R. Oppenheimer	5
	Mary R. Palms	5
	M'r's Kate M. Patton	6
	Fred. W. Parhan	10
	W. E. Pendleton	3
	John W. Price	5
	Pritchard & Bickham	75
	Ping & Bro's	1
	M'r's M. A. L. Raymond	2
	Rector, wardens & vestry of Trinity Church	6

	W. G. Robinson	10
	R. M. Sawyer	2
	J. A. Shakespeare	27
	A. W. Sanford	10
	W'm Stevens	10
	Andrew Stewart	5
280	Stevens & Seymour	12
	Arthur Sheiff	12
	Cha's B. Singleton	2
	Edw. Schirmer	3
	T. Soniat	4/5
	Sun Mutual Insurance Co	12
	M'r's J. Sutherland	3
	E. H. Summers	271 2/5
	M. Schuppert	1
	Samuel A. Shumway	10
	Sam'l M. Todd	2
	R. Thornhill	13
	Touro Infirmary	10
	T. Y. P. Tureman	1
	H. T. Vennard	5
	Jos. Villio	2
	George J. Vincent	8
	Henry Vorhaben	2
	J. J. Warren	4
	W. A. Waldo	24
	Jos. G. Warriner	37
	W. S. Wheeler	40
	B. Witherspoon	20
	Henrietta Wilson	2
	Elias Wolf	3

SERIES B.

	J. B. Alexander & Co	250
	Behan, Thorn & Co	10
	Emory Clapp	50
	Cohn & Seligman	10
	B. Davis	50
	Morris Dyer	40
281	Jos. S. Doane	25
	Richard Flower	30
	Julius Fox	50
	B. F. Leefe	100
	M. A. de Lizardi & Co	250
	M. A. de Lizardi	300
	Miguel Genaro de Lizardi	250
	Ed. Lubie	100
	McNeiley & Milburn	10
	Geo. McCoughan	94
	W'm Maxwell	10
	Mummy Schroeder	56
	Edward Newman	25
	W. Norcom	20
	A. Oppenheimer	25
	Peter O'Donnell	10

Fred. W. Parhan	50
Phelps, McCulloch & Co.	50
David Pipes	20
Miss E. M. Small	50
Stevens & Seymour	1
Stewart Bro's & Co	50
T. M. Simmonds	50
E. H. Summers	248
Pedro del Valle	250
Geo. S. Vincent	50
W'm A. Waldo	26

I certify the foregoing to be a true & correct transcript, from the stock ledgers, series A & B, of the Crescent City National Bank, of the
282 names of the stockholders, and the number of shares held by each when the bank went into the hands of the receiver on the 17th March, 1873, offered in evidence by defendants February 7th, 1876.

(Signed) F. A. WOOLFLEY,
Special Examiner.

Motion and order for publication & fixing for hearing.—Entered and filed April 4th, 1876.

U. S. circuit court, district of Louisiana.

FRANK F. CASE, REC'R OF THE CRESCENT City National Bank of New Orleans, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

On motion of J. D. Rouse and J. R. Beckwith, solicitors for complainant, publication of testimony is ordered as to the following-named defendants, viz: Henry Abraham, Samuel M. Todd, Sun Mutual Insurance Company, B. J. West, William Steven, James McConnell, Jose Barba, Emory Clapp, E. J. Hart & Co., Peter O'Donnell, Jos. A. Shakespeare, McNeely & Milburn, Crescent Mutual Insurance Company, Alcus, Scherck & Autey, William P. Ellison, Sam'l Freidlander, Pritchard & Bickham, M'r's Fabio, Joseph Villio, H. O. Seixas, M'r's Jane E.
283 Shumway, tutrix, etc., G. W. Hynson, W. C. Lipscombe, Samuel H. Kennedy, Germania National Bank of New Orleans, Stevens & Seymour, D. S. Bryon, Gabriel Leaumont, Charles B. Singleton, A. Levi, R. T. Buckner, Katz & Barnett, E. Newman, M'r's M. A. L. Raymond & her husband W. C. Raymond, Alfred Moulton, & R. A. Bourk, executors, etc.; rectors, wardens, etc., of Trinity Church, & Theodore Brierre, and that said cause as to said defendants be assigned for hearing Monday, April 10th, 1876, at 11 a. m., & that said defendants be notified thereof.

Hearing and continuance of case.—Extract from the minutes, April 10th, 1876.

United States circuit court, fifth circuit and district of Louisiana. November term, A. D. 1875.

NEW ORLEANS, *Monday, April* 10, 1876.

Court met pursuant to adjournment.
Present, Hon. W'm B. Woods, circuit judge.

FRANK F. CASE, REC'R OF THE CRESCENT CITY National Bank of New Orleans, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

This cause was called for trial as to the defendants named in the order of the 4th instant.

Present Mess'rs Rouse & Grant and J. R. Beckwith for com-
284 plainant, M. M. Cohen, Leovey & Monroe & Hart, James McConnell, Percy Roberts, E. B. Kruttschnitt, Robert J. Kerr, Semmes & Mott, F. Michmand, Buck & Dinklespeil, Finney & Miller, Singleton & Brown, Merrick, Race & Foster, and Horner & Benedict for defendants.

And after hearing the pleadings, evidence, and argument the cause is continued until to-morrow at 11 a. m.

Hearing and submission of case.—Extract from the minutes, April 11th, 1876.

Circuit court of the United States, district of Louisiana.

FRANK F. CASE, REC'R OF THE CRESCENT CITY National Bank of New Orleans, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

The trial of this cause was resumed as continued from yesterday, and after hearing further argument, the court took time to consider, one week being allowed to counsel to furnish briefs.

Decree as to certain defendants.—Entered and filed June 2nd, 1876.

United States circuit court, district of Louisiana. In equity.

285 FRANK F. CASE, RECEIVER OF THE CRESCENT CITY National Bank of New Orleans, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

This cause came on to be heard at this term, as to the defendants hereinafter named, and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

That said Frank F. Case, in his capacity as receiver of said Crescent City National Bank of New Orleans, complainant, do have and recover seventy per centum of the par value of the shares of the capital stock of said bank, severally owned by said defendants, now assessed against them, that is to say:

That said complainant do have and recover from the defendant, Henry Abraham, as the owner of five such shares, the sum of three hundred and fifty dollars, and from the defendant, Theodore Brierre, as the owner of seventeen such shares, the sum of eleven hundred and ninety dollars; and from the defendant, R. T. Buckner, as the owner of
286 twenty-five such shares, the sum of seventeen hundred and fifty dollars; and from the defendant, Emory Clapp, as the owner of ninety-two such shares, the sum of six thousand four hundred and forty

dollars; and from the defendant, the Crescent Mutual Insurance Company, as the owner of one hundred and thirty such shares, the sum of nine thousand one hundred dollars; and from the defendant, the commercial partnership of Alcus, Scherck & Autey, and Lewis Alcus, Isaac Scherck, & S. D. Autey, the indvidual members thereof in solido, as owner of seventy such shares, the sum of forty-nine hundred dollars; and from the defendant, William P. Ellison, as owner of ten such shares, the sum of seven hundred dollars; and from the defendant, Samuel Friedlander, the ownerof twenty-six such shares, the sum of eighteen and twenty dollars; and from the defendant, the commercial partnership of E. J. Hart & Co., and E. J. Hart and B. B. Hart, the individual members thereof in solido, owner of two such shares, the sum of one hundred and forty dollars; and from the Germania National Bank of New Orleans, owner of one hundred such shares, seven thousand dollars; the defendant
the late commercial partnership of Katz & Barnett, and Sigmund
287 Katz and Nathaniel Barnett, the individual members thereof in solido, owner of thirty such shares, the sum of two thousand one hundred dollars; and from the defendant the commercial partnership of Lehman, Abraham & Co. and Emanuel Lehman, Meyer Lehman, Henry Abraham, and Henry Beer, the individual members thereof, in solido, owner of fifteen such shares, the sum of one thousand and fifty dollars; and from the defendant, Gabriel Leaumont, owner of five such shares, the sum of three hundred and fifty dollars; and from the defendant A. Levi, owner of seventeen such shares, the sum of eleven hundred and ninety dollars; and from the defendant E. Newman, owner of ninety such shares, the sum of sixty-three hundred dollars; and from the defendant Peter O'Donnell, owner of ten such shares, the sum of seven hundred dollars; and from the defendant the commercial partnership of Pritchard & Bickham, and Richard Pritchard & A. M. Bickham, the individual members thereof in solido, owners of seventy-five such shares, the sum of five thousand two hundred and fifty dollars; and from the defendants M'r's M. A. L. Raymond and her husband W.
C. Raymond, owners of two such shares, the sum of one hundred
288 and forty dollars; and from the defendant J. A. Shakespeare, owner of twenty-seven such shares, the sum of eighteen hundred and ninety dollars; and from the defendant the commercial partnership of Stevens & Seymour, and William H. Stevens and William E. Seymour, the individual members thereof in solido, owners of thirteen such shares, the sum of nine hundred and ten dollars; and from the defendant Samuel M. Todd, owner of two such shares, the sum of one hundred and forty dollars; and from the defendant Joseph Villio, owner of two such shares, the sum of one hundred and forty dollars; and from the defendant M'r's L. Fabio, owner of eighty shares, the sum of five hundred and sixty dollars; and from the defendant C. M. Soria, owner of one hundred such shares, the sum of seven thousand dollars, and from the defendant H. O. Seixas, owner of fourteen such shares, the sum of nine hundred and eighty dollars; and from the defendant D. S. Bryon, owner of twenty-two such shares, the sum of fifteen hundred and forty dollars; and from the defendant the commercial partnership of McNeely & Milburn, and W. L. McNeely and
T. H. Milburn, individual members thereof in solido, owners of
289 ten such shares, the sum of seven hundred dollars; and from the defendant B. J. West, owner of fifty-eight such shares, the sum of four thousand and sixty dollars; and from the defendant Charles B. Singleton, owner of two such shares, the sum of one hundred and forty dollars; and from the defendant the Sun Mutual Insurance Company

of New Orleans, owner of twelve such shares, the sum of eight hundred and forty dollars; and from the defendant William Steven, owner of ten shares, the sum of seven hundred dollars; and from the defendant George W. Hynson, owner of one hundred and sixty-one such shares, the sum of eleven thousand two hundred and seventy dollars.

And it is further ordered, adjudged, and decreed that said complainant do have writ of execution or fieri facia' against said defendants and their property to enforce the payment of said sums of money so adjudged and decreed to be due by them respectively.

And it is further ordered and decreed that such sum of money so decreed to be due by each of said defendants shall, when paid, be in
290 satisfaction of the said demand set forth in the bill of complaint, against him or them, respectively; but the bill shall still stand against the said defendants respectively, and they shall be liable to further contribution until a sufficient sum of money shall be realized to pay and disharge the debts due by said Crescent City National Bank of New Orleans, and until it shall be certain that no further contribution from such shareholders will be required for that purpose.

And it is further ordered, adjudged, and decreed that said complainant do recover of and from said defendants his costs to be taxed.

And it is further ordered, adjudged, and decreed that said bill, as to the defendants Samuel H. Kennedy, W. C. Lipscombe, James McConnell, Jane E. Shumway, widow of Samuel A. Shumway, & tutrix, etc., and the rector, wardens, & vestry of Trinity Church, formerly the Church of the Holy Trinity, Jacob Katz, & Selim Barnett be dismissed with costs.

And it is further ordered that the bill be restrained for further proceedings as to the other defendants therein named.

(Signed) W. B. WOODS, *Judge.*

291 *Motion and order for suspensive appeal on behalf of Germania National Bank.—Entered and filed June 9th,* 1876.

United States circuit court, district of Louisiana. In equity.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

On motion of Buck & Dinkelspeil, solicitors for the Germania National Bank, one of the parties defendant herein, and on suggesting to the court that they believe and are informed that there is error to the prejudice of said Germania National Bank in the decree herein filed, entered, & signed on the 2nd of June, 1876, and that said bank is desirous of having and prosecuting a suspensive appeal, to operate as a supersedeas, from said decree to the honorable the Supreme Court of the United States:

It is ordered that the said Germania National Bank be allowed a suspensive appeal, to operate as a supersedeas, to the honorable the
292 Supreme Court of the United States from the decree herein entered against them on the 2nd of June, 1876, on giving bond, conditioned as the law directs, with good & solvent security in the sum of ($12,000) twelve thousand dollars, and that said appeal be made returnable in said Supreme Court on the 2d Monday of October, 1876.

Motion and order for suspensive appeal on behalf of Alcus, Scherck and Antey.—Entered and filed June 9th, 1876.

United States circuit court, district of Louisiana. In equity.

FRANK F. CASE, REC'R OF THE CRESCENT CITY National Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

On motion of E. B. Kruttschuitt, solicitor for the commercial firm of Alcus, Scherck and Antey, one of the defendants herein, and on suggesting to the court that said firm has been informed and beleives that there is error to its prejudice in the final decree herein entered on the 2d day of June, 1876, and that it desires to appeal from said final decree to the honorable the Supreme Court of the United States, said appeal to be a supersedeas:

293 It is ordered that an appeal be granted to said commercial firm of Alcus, Scherck & Antey herein to the Supreme Court of the United States, the said appeal to be a supersedeas, on its giving, with good and solvent security, to be approved by the court, in the sum of $8,000 dollars, conditioned according to law, said appeal to be returnable to said Supreme Court of the United States on the 2d Monday in October, 1876.

Motion for suspensive appeal on behalf of the Crescent Mutual Ins. Company.—Entered & filed June 8th, 1876.

United States circuit court, district of Louisiana. In equity.

FRANK F. CASE, REC'R OF THE CRESCENT CITY National Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

On motion of M. M. Cohen, solicitor for the Crescent Mutual Insurance Company, one of the defendants in this case, it is ordered that they be allowed a suspensive appeal, to operate as a supersedeas, to the Supreme Court of the United States from the decree rendered in this case against said Crescent Mutual Insurance Company, on their giving bond

294 with surety in the sum of fourteen thousand ($14,000) dollars, and that said appeal be returnable to the Supreme Court on the 2d Monday of October, 1876.

Motion and order for suspensive appeal on behalf of B. J. West.—Entered and filed June 9th, 1876.

Circuit court of the United States, fifth circuit, district of Louisiana. In equity.

FRANK F. CASE, REC'R OF THE CRESCENT CITY Nat'l Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

On motion of R. H. Marr, solicitor of Benjamin J. West, one of the

defendants in the above-entitled cause, and on showing to the court that in the final decree in said cause, rendered and entered on the 2nd day of June, 1876, against the said defendant Benjamin J. West, there is error to his prejudice as he is advised, whereby he is aggreived—

It is now ordered by the court that a suspensive appeal, to operate as a supersedeas, be granted to said Benjamin J. West, from said final decree against him, returnable in the Supreme Court of the United
295 States at the next ensuing term thereof according to law, on his giving bond or security as required by law.

Bond for appeal of the Germania National Bank of New Orleans. Filed June 10th, 1876.

United States circuit court, district of Louisiana.

FRANK F. CASE, RECEIVER OF THE CRESCENT City Nat'l Bank of New Orleans, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

UNITED STATES OF AMERICA:

Know all men by these presents that we, the Germania National Bank of New Orleans, as principal, and Louis Schneider, Jules Cassard, Henry Abraham, and L. B. Cain, as sureties, each in the sum of three thousand dollars are held and firmly bound, jointly and severally, unto F. F. Case, receiver of the Crescent City National Bank, in the sum of twelve thousand dollars, lawful money of the United States of America, to be paid to the said F. F. Case, receiver, or his successor or legal representative, their heirs, executors, administrators, and assigns, for
296 which payment well and truly to be made we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the tenth day of June, in the year of our Lord eighteen hundred and seventy-six.

Whereas the above bounden Germania National Bank has, on motion in open court on June 9th, 1876, obtained an order from the judges of the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, allowing a suspensive appeal, to operate as a supersedeas, to the honorable the Supreme Court of the United States, from a decree entered and signed against said bank in the matter of F. F. Case, receiver, vs. H. Abraham et al., No. 7261 of the docket of said circuit court on June 2d, 1876:

Now, the condition of the above obligation is that we, the above-bounden Germania National Bank, shall prosecute its said appeal to effect, and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force & virtue

LOUIS SCHNEIDER, [L. S.]
Pres't Germania Nat'l Bank.

Signed, sealed, & delivered in the presence of—
CHA'S F. BUCK.

297 (Signed) LOUIS SCHNEIDER, for $3,000. [L. S.]
(Signed) JULES CASSARD, for $3,000. [L. S.]
(") HENRY ABRAHAM, for ($3,000) three thousand. [L. S.]
(") L. B. CAIN, for ($3,000) three thousand. [L. S.]

Approved.

EDWARD C. BILLINGS,
Judge.

Bond for appeal of Alcus, Scherck & Autey. Filed June 10th, 1876.

United States circuit court, district of Louisiana.

FRANK F. CASE, RECEIVER OF THE CRESCENT City Nat'l Bank of New Orleans, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

UNITED STATES OF AMERICA:

Know all men by these presents that we, the commercial firm of Alcus, Scherck & Autey, of New Orleans, Louisiana, as principals, and Arthur P. Mason, as surety, are held and firmly bound, jointly and severally, unto Frank F. Case, receiver of the Crescent City National Bank of New Orleans, in the sum of eight thousand dollars, lawful money of the United States of America, to be paid to the said Frank F.
298 Case, receiver of the Crescent City National Bank of New Orleans, heirs, executors, administrators, and assigns, for which payment well and truly to be made we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the tenth day of June, in the year of our Lord eighteen hundred and seventy-six.

Whereas the above-bounden commercial firm of Alcus, Scherck & Autey hath this day presented a motion in open court to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, praying for an appeal, to operate as a supersedeas, from a final decree entered against said firm on the 2d day of June, 1876, in the cause entitled Frank F. Case, receiver of the Crescent City National Bank of New Orleans, vs. H. Abraham et als., No. 7261 of the docket of said court:

Now, the condition of the above obligation is, that if the above bounden commercial firm of Alcus, Scherck & Autey shall prosecute their said appeal to effect, and answer all costs and damages if they shall fail to make good their plea, then this obligation shall be void, other-
299 wise to remain in full force and virtue.

(Signed) ALCUS, SCHERCK & AUTEY, [L. S.]
By I. SCHERCK.
" A. P. MASON. [L. S.]

Signed, sealed, & delivered in the presence of—
E. B. KRUTTSCHUITT.

Approved.
EDWARD C. BILLINGS,
Judge.

Bond for suspensive appeal of Crescent Mutual Ins. Co. Filed June 10th, 1876.

United States circuit court, district of Louisiana.

FRANK F. CASE, RECEIVER OF THE CRESCENT City Nat'l Bank of New Orleans, *vs.* HENRY ABRAHAM ET AL. } No. 7261.

UNITED STATES OF AMERICA:

Know all men by these presents that we, the Crescent Mutual Insurance Company of New Orleans, as principal, and Thomas A. Adams, S.

Hernshein, Samuel H. Kennedy, S. B. Newman, John Phelps, R. B. Post, L. C. Jurey, as sureties, are held and firmly bound, jointly and severally, unto F. F. Case, receiver of Crescent City National Bank,
300 in the sum of fourteen thousand dollars, lawful money of the United States of America, to be paid to the said F. F. Case, receiver of Crescent City National Bank, his heirs, executors, administrators, and assigns, for which payment well and truly to be made we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the ninth day of June, in the year of our Lord eighteen hundred and seventy-six.

Whereas the above-named Crescent Mutual Insurance Company of New Orleans hath on the 8th June, 1876, presented to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, a motion of appeal in open court, which was allowed in the case of F. F. Case, receiver of the Crescent City National Bank, vs. Henry Abraham et als., No. 7261 of the docket of the circuit court of the United States for the district of Louisiana, returnable to the Supreme Court of the United States on the 2d Monday of October, 1876, at Washington:

Now, the condition of the above obligation is, that we, the above-bounden Crescent Mutual Insurance Co. of New Orleans, and Thomas A. Adams, S. Hernshein, Samuel H. Kennedy, S. B. Newman, John Phelps, R. B. Post, and L. C. Jurey, will well and truly pay to
301 the said F. F. Case, receiver of the Crescent City National Bank, a defendant in said appeal, costs and all such damages as he may recover against us in case it should be decided that the said appeal was wrongfully obtained.

CRESCENT MUTUAL INS. CO.,
By THO'S A. ADAMS, [L. S.]
President.

(Sig'd)	THO'S A. ADAMS.	[L. S.]
"	S. HERNSHEIN.	[L. S.]
"	SAM'L H. KENNEDY.	[L. S.]
"	S. R. NEWMAN.	[L. S.]
"	JOHN PHELPS.	[L. S.]
"	R. B. POST.	[L. S.]
"	L. C. JUREY.	[L. S.]

Signed, sealed, and delivered in presence of—
CHA'S E. RICE.

Approved.

EDWARD C. BILLINGS,
Judge.

Bond for appeal of B. J. West.—Filed June 28th, 1876.

United States circuit court, district of Louisiana.

FRANK F. CASE, RECEIVER OF THE CRESCENT City National Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

UNITED STATES OF AMERICA:

302 Know all men by these presents that we, Benjamin J. West,

of the city of New Orleans, as principal, and John Chaffe and Thomas H. Handy, as sureties, are held and firmly bound, jointly and severally, unto Frank F. Case, receiver of the Crescent City National Bank of New Orleans, in the sum of seven thousand dollars, lawful money of the United States of America, to be paid to the said Frank F. Case, receiver of the Crescent City National Bank of New Orleans, or to his successor in said capacity, for which payment well and truly to be made we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the twenty-eighth day of June, in the year of our Lord eighteen hundred and seventy-six.

Whereas the said Benjamin J. West has, on the 9th of June, 1876, presented a motion to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, praying for an appeal to the Supreme Court of the United States from a final decree rendered and signed on the 2d day of June, 1876, in the suit entitled Frank F. Case, receiver of the Crescent City National Bank of New Orleans, vs. Henry Abraham et als., No. 7261 of the docket
303 of the said circuit court for the district of Louisiana:

Now, the condition of the above obligation is, that he, the above-bounden Benjamin J. West, the appellant herein, shall prosecute his appeal to effect, and will well and truly pay to the said Frank F. Case, receiver of the Crescent City National Bank of New Orleans, or to his successor in said capacity, the defendant in said appeal, all such damages and costs as he may recover against appellant in case the said appellant should fail to make his plea good.

(Sign'd) B. J. WEST, [L. S.]
(") JOHN CHAFFE. [L. S.]
(") THOMAS H. HANDY. [L. S.]

Signed, sealed, and delivered in the presence of—
R. B. HOLLY.
F. B. CLAPP.

UNITED STATES OF AMERICA,
District of Louisiana, ss:

Personally appeared John Chaffe and Thomas H. Handy, sureties on the within bond, who, being each duly sworn, depose and say that they reside in the city of New Orleans, Louisiana, and that they are each worth the sum of seven thousand dollars ($7,000) over and above their debts and liabilities and property exempt from execution.

(Signed) JOHN CHAFFE.
(") THO'S H. HANDY.

Sworn to and subscribed before me, June 28th, 1876.

F. A. WOOLFLEY,
Commissioner U. S. Circuit Court, District of Louisiana.

304 *Consent as to manuscript of appeal.—Filed July 24th*, 1876.

United States circuit court, district of Louisiana. In equity.

FRANK F. CASE, REC'R OF THE CRESCENT City Nat'l Bank of New Orleans,
vs.
HENRY ABRAHAM ET AL. } No. 7261.

In the above-entitled cause it is agreed between the undersigned so-

licitors for the Crescent Mutual Insurance Company, Germania National Bank, B. J. West, and Alcus, Scherck and Autey, defendants and appellants from a final decree herein rendered on the day of June, 1876, and the undersigned solicitor for complain't and appellee, that the clerk of the United States circuit court shall prepare only one transcript of the record in this suit, which said transcript shall be used by all parties appellant from said decree in the Supreme Court of the United States; and which being filed by one of said appellants in the matter of one of said appeals, shall be considered as filed in all, and which said transcript shall consist of the whole record in this suit, except the following

305 documents, pleadings, evidence, and papers, which shall be omitted from the same, and of which said omission none of the parties to this agreement are to take any advantage, viz:

I. All subpœnas in chancery; also all marshal's returns on the same.

II. All appearances, demurrers, pleas, answers, replications, or other pleadings; also all consents of counsel, notices of trial, fi. fas., and returns on same, entered, filed, or made by or relating to any other parties defendant herein except appellants.

III. All testimony of the following witnesses whose evidence related only to special defences of other parties besides appellants, viz: W. E. Lipscomb, A. A. Ruch, Alf. Marchand, Jacob Katz, S. Katz, F. B. Leefe, L. H. Gardner, Peter H. Keenan, J. K. Small, Ja's A. Vigneaud, W. J. Behan, Selim Barnett, Ed. Lubie, G. W. Hynson, N. O. Hynson, Louis Morel, A. Levi.

IV. All of transfer books of Crescent City National Bank of New Orleans excepting entries transfers to and by either of said defendants' appellants.

306 It is furthermore understood and agreed that this agreement is not to be so construed as to prevent any of the parties hereto from hereafter demanding that any of said omitted portions of the record herein be transcribed in the said transcript in case said party should consider any of said omitted portions material to the case, and give notice to the clerk thereof.

(Signed) E. B. KRUTTSCHUITT,
Solicitor for Alcus, Scherck and Autey.

(Signed) BUCK & DINKLESPEIL,
For Germania National Bank.

(Signed) M. M. COHEN,
Solicitor for Crescent Mutual Ins. Co.

(Signed) J. D. ROUSE,
Solicitor for Complainant.

(Signed) R. H. MARR,
Solicitor for B. J. West.

307 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 306 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of Frank F. Case, receiver of the Crescent City National Bank of New Orleans, versus Henry Abra-

ham, Germania National Bank, Alcus, Scherck & Autey, Crescent Mutual Insurance Company, & Benjamin J. West and others, defendants, No. 7261 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court at the city of New Orleans this 5th day of September, A. D. 1876.

[SEAL.] F. A. WOOLFLEY,
Clerk.

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 5th day of September, A. D. 1876.

EDWARD C. BILLINGS,
Judge.

308 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Frank F. Case, receiver of the Crescent City National Bank of New Orleans, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion & order for appeal, recorded & filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the Germania National Bank of New Orleans is defendant and appellant, plaintiff in error, and you are complainant and appellee, to show cause, if any there be, why the judgment rendered against the said Germania National Bank of New Orleans, as in said motion mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 16th day of June, in the year of our Lord one thousand eight hundred and seventy-six.

EDWARD C. BILLINGS,
Judge.

309 Citation. (Indorsed:) F. F. Case, receiver. United States circuit court. No. 7261. F. F. Case, receiver, vs. Henry Abraham et al. Citation. Buck & Dinkelspeil, att'ys for Germania Nat'l B'k of N. O.

Marshal's return.

Received Jun. 16, 1876, by the U. S. marshal, and on the 17th day of June, 1876, served a copy hereof on Frank F. Case, receiver of the Crescent City National Bank of New Orleans, by handing the same to him in person in the city of New Orleans.

S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
D'y Marshal.

On this 20th day of June, 1876, personally appeared before me, the subscriber, S. W. Reed, and makes oath that he served a copy of the within citation as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to and subscribed before me this 20th June, 1876.

F. B. VINOT,
U. S. Comm'r

310 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Frank F. Case, receiver of the Crescent City National Bank of New Orleans, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion & order for appeal, recorded & filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein Alcus, Scherck & Autey are defendants and appellants, and you are complainant and appellee, to show cause, if any there be, why the judgment rendered against the said Alcus, Scherck & Autey, as in said motion mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 16th day of June, in the year of our Lord one thousand eight hundred and seventy-six.

EDWARD C. BILLINGS,
Judge.

311 (Indorsed:) F. F. Case, receiver. United States circuit court. No. 7261. F. F. Case, receiver, vs. H'y Abraham et al. Citation. E. B. Kruttschuitt, att'y for Alcus, Scherck & Autey.

Marshal's return.

Received Jun. 16, 1876, by the U. S. marshal, and on the 17th day of June, 1876, served a copy hereof on Frank F. Case, receiver Crescent City National Bank of New Orleans, by handing the same to him in person in the city of New Orleans.

S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
D'y Marshal.

On this 20th day of June, 1876, personally appeared before me, the subscriber, S. W. Reed, and makes oath that he served a copy of the within citation as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to and subscribed before me this 20th day of June, 1876.

F. B. VINOT,
U. S. Comm'r.

312 THE UNITED STATES OF AMERICA.:

Circuit court of the United States, district of Louisiana.

The President of the United States to Frank F. Case, receiver of the Crescent City National Bank of New Orleans, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion & order for appeal recorded & filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the Crescent Mutual Insurance Company of New Orleans is defendant and appellant, and you are complainant and appellee, to show cause, if any there be, why the judgment rendered against the said Crescent Mutual Insurance Co. of New Orleans, as in said motion mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 16th day of June, in the year of our Lord one thousand eight hundred and seventy-six.

EDWARD C. BILLINGS, *Judge.*

313 (Indorsed:) F. F. Case, receiver. United States circuit court. No. 7261. F. F. Case, receiver, vs. H'y Abraham et al. Citation. June 20, '76. M. M. Cohen, att'y for Crescent Mut. Ins. Co. of N. O.

Marshal's return.

Received Jun. 16, 1876, by the U. S. marshal, and on the 17th day of June, 1876, served a copy hereof on F. F. Case, receiver of the Crescent City National Bank, by handing the same to him in person in the city of New Orleans.

S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
D'y Marshal.

On this 20th day of June, 1876, personally appeared before me the subscriber, S. W. Reed, and makes oath that he served a copy of the within citation as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to and subscribed before me this 20th June, 1876.

F. B. VINOT,
U. S. Comm'r.

314 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Frank F. Case, receiver of the Crescent City National Bank of New Orleans, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion & order for appeal, recorded & filed in the clerk's office of the circuit court of the

United States for the fifth circuit and district of Louisiana, wherein Benjamin J. West is defendant and appellant, and you are complainant and appellee, to show cause, if any there be, why the judgment rendered against the said Benjamin J. West, as in said motion mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 20th day of June, in the year of our Lord one thousand eight hundred and seventy-six.

EDWARD C. BILLINGS, *Judge.*

315 (Indorsed:) F. F. Case, receiver. United States circuit court. No. 7261. F. F. Case, receiver, vs. H'y Abraham et al. Citation. Benjamin J. West, appellant.

Marshal's return.

Received Jun. 20, 1876, by the U. S. marshal, and on the 20th day of June, 1876, served a copy hereof on Frank F. Case, receiver of the Crescent City National Bank of New Orleans, by handing the same to him in person, in the city of New Orleans.

S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
D'y Marshal.

On this 22d day of June, 1876, personally appeared before me the subscriber, S. W. Reed, and makes oath that he served a copy of the within citation as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to and subscribed before me this 22d day of June, 1876.

F. B. VINOT,
U. S. Comm'r.

(Indorsement on cover:) No. 217. The Germania National Bank of New Orleans, Alcus, Scherck, & Autey, The Crescent Mutual Insurance Company, & Benjamin J. West, appellants, vs. Frank F. Case, receiver of the Crescent City National Bank of New Orleans. Louisiana C. C. U. S. Filed 11th October, 1876.

Supreme Court of the United States.

OCTOBER TERM, 1878.

No. 217

GERMANIA NATIONAL BANK, ALCUS, SCHERCK & AUTEY, AND OTHERS, APPELLANTS,

versus

FRANK F. CASE, RECEIVER.

Brief in Behalf of Alcus, Scherck & Autey, The Crescent Mutual Insurance Company, and Benjamin J. West, Appellants.

HENRY J. LEOVY,
Of Counsel for Appellants.

A W Hyatt, Print, 38 Camp Street, N. O.—13,234.

Supreme Court of the United States.

OCTOBER TERM, 1878.

No. 217

GERMANIA NATIONAL BANK, ALCUS, SCHERCK & AUTEY, AND OTHERS, APPELLANTS,

versus

FRANK F. CASE, RECEIVER.

Brief in Behalf of Alcus, Scherck & Autey, The Crescent Mutual Insurance Company, and Benjamin J. West, Appellants.

For several years before, and up to February, 1872, the Crescent City Bank, a corporation organized under the laws of the State of Louisiana, having a capital stock of less than Five Millions, was engaged in the business of Banking at the city of New Orleans.

By vote of the owners of two-thirds of the stock, this Bank was converted into a National Banking Association, with a capital of Five Hundred Thousand Dollars, divided into Shares of One Hundred Dollars each, under the name of The Crescent City National Bank of New Orleans; and on the 15th February, 1872, the Comptroller of the Treasury granted the requisite certificate,

in virtue of which the Bank commenced business under the new organization.

About the middle of March, 1873, in consequence of the disastrous failure of Lizardi & Co., the London Correspondents of the Bank, its affairs became embarrassed; on the 14th March it ceased to pay the checks of depositors; on the 17th some of its circulating notes were protested, and on the 18th the Comptroller of the Treasury appointed a Receiver.

On the 23d July, 1874, the Comptroller having "determined that the deficiency of the assets equals or "exceeds seventy per centum of the capital stock," directed the Receiver to proceed against "each and "every Stockholder of said Bank, owning any Stock "thereof or any interest therein at the time of the Sus- "pension of said Bank," to compel a present contribution of seventy per cent., subject to such further contribution as might be found necessary.

In accordance with this instruction, the Receiver brought this Bill in Equity, in the Circuit Court, against sundry persons, to recover of them, respectively, seventy per cent. of the par value of the Shares, of which, it is alleged they were respectively owners, with reservation of the right to proceed, under the same Bill, for further contribution, if necessary.

The defendants, appellants, in whose behalf this Brief is submitted, all denied the alleged deficiency of the assets, and put at issue their liability to contribute the seventy per cent. demanded; and Alcus, Scherck &

Autey, and Benjamin J. West, specially denied that they were holders or owners of any shares of the stock at the time of answering, or at the time of the Suspension of payment and Banking operations by the Bank, or at the date at which the affairs of the Bank were placed in the hands of a Receiver.

The Decree brought up for Review awarded to the complainant the seventy per cent. presently demanded, and retained the Bill for further contribution if need be.

The proof shows that Alcus, Scherck & Autey, on the 12th March, 1873, transferred on the Transfer Book of the Bank, to Julius Fox, the seventy shares which stood in their names. See answer to interrogatories accompanying the bill, printed Record p. 25; Transfers pp. 77, 78: that West, on the 13th March, 1873, transferred on the Transfer Book of the Bank to Vincent, the fifty-eight shares which stood in his name; and that the Bank was going on in business, and pay-the checks of depositors at the time these transfers were made: pp. 31, 32, 41, 42, 44, 46; Transfers p. 79.

This special defense is submitted on the testimony without argument.

When the appeals were taken in this case, the only decision of this Court which seemed to be applicable, was in Kennedy vs. Gibson, 8 Wallace, 498. As the Court will remember this was a Bill in equity, by the Receiver of a National Bank against a number of the stockholders, to recover a per centage. The defendants demurred on the ground that it was not alleged in the Bill that the

in virtue of which the Bank commenced business under the new organization.

About the middle of March, 1873, in consequence of the disastrous failure of Lizardi & Co., the London Correspondents of the Bank, its affairs became embarrassed: on the 14th March it ceased to pay the checks of depositors; on the 17th some of its circulating notes were protested, and on the 18th the Comptroller of the Treasury appointed a Receiver.

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In accordance with this instruction, the Receiver brought this Bill in Equity, in the Circuit Court, against sundry persons, to recover of them, respectively, seventy per cent. of the par value of the Shares, of which, it is alleged they were respectively owners, with reservation of the right to proceed, under the same Bill, for further contribution, if necessary.

The defendants, appellants, in whose behalf this Brief is submitted, all denied the alleged deficiency of the assets, and put at issue their liability to contribute the seventy per cent. demanded; and Alcus, Scherck &

Autey, and Benjamin J. West, specially denied that they were holders or owners of any shares of the stock at the time of answering, or at the time of the Suspension of payment and Banking operations by the Bank, or at the date at which the affairs of the Bank were placed in the hands of a Receiver.

The Decree brought up for Review awarded to the complainant the seventy per cent. presently demanded, and retained the Bill for further contribution if need be.

The proof shows that Alcus, Scherck & Autey, on the 12th March, 1873, transferred on the Transfer Book of the Bank, to Julius Fox, the seventy shares which stood in their names. See answer to interrogatories accompanying the bill, printed Record p. 25; Transfers pp. 77, 78: that West, on the 13th March, 1873, transferred on the Transfer Book of the Bank to Vincent, the fifty-eight shares which stood in his name; and that the Bank was going on in business, and pay-the checks of depositors at the time these transfers were made: pp. 31, 32, 41, 42, 44, 46; Transfers p. 79.

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When the appeals were taken in this case, the only decision of this Court which seemed to be applicable, was in Kennedy vs. Gibson, 8 Wallace, 498. As the Court will remember this was a Bill in equity, by the Receiver of a National Bank against a number of the stockholders, to recover a per centage. The defendants demurred on the ground that it was not alleged in the Bill that the

Comptroller of the Treasury had fixed the percentage, and instructed the Receiver to proceed. The discussion and the opinion of the Court took a much wider range; but, as the only question seemed to be the authority of the Receiver to proceed against the Stockholders without the previous action and instruction of the Comptroller, the Bar of New Orleans, generally considered that decision conclusive upon one point only, that the Receiver had no such authority.

Subsequently in Case, Receiver, vs. Galli, 4 Otto 673, which was a suit at law against a single Stockholder, to recover the par value of the shares owned by him, the defenses were set up as in this case, that a Bank, organized under the laws of a State could not be converted into a National Bank by the vote of two thirds of the Stockholders, so as to impose upon all the Stockholders liability beyond their subscriptions which they had paid in full, contrary to the provisions of the State law; that the shareholders were not included by the action of the Comptroller, and that they might plead and show that the actual deficiency of the assests was not sufficient to require them to contribute the percentage fixed arbitrarily by him.

These defenses were held in Galli's case to be inadmissible; and the decisions in Kennedy's case and in Galli's, must be accepted as conclusive on the points:

1st. That a Receiver cannot proceed against the Stockholders, without the previous action and authority of the Comptroller.

2d. That where the Comptroller directs the Receiver to proceed for the par value of the stock, the suit must be at law.

3d. That where the Comptroller directs the Receiver to proceed for a percentage, the suit may be in Equity.

4th. That a Bank, organized and existing under the laws of a State, may, by the vote of two-thirds in amount of the Stockholders, be converted into a National Banking Association, with all the liabilities which attach to an original organization under the National Banking law.

5th. That in a suit at law, against a single stockholder, to recover the par value of his shares, he cannot plead or prove that the deficiency of the assets, to pay the debts of the bank, does not require a contribution up to the par value of the stock.

The first, second and third points are not controverted in this case; and discussion of the fourth point, after the authoritative decision in Galli's case, would be out of place and unseemly. It only remains to inquire whether the fifth point is equally applicable to this case, as it was to Galli's case; and the only ground for question is, that this is not a suit at law against a single stockholder, to recover the par value of his shares, but a Bill in Equity against all the accessible solvent stockholders, to recover a percentage, a ratable contribution. In ignorance of what the views of the Court may be in this respect, and in the discharge of professional duty, the question is presented with all defer-

ence, and with the intention not to go beyond the strictest limits of professional propriety.

When the Comptroller directs the Receiver to proceed for a certain percentage, the amount to be recovered of each shareholder is ascertained and fixed as absolutely as if the par value is to be sued for. In the one case the suit must be at law; in the other it may be in equity. There seems to be no good reason why the Receiver might not sue at law to recover the fixed percentage as well as to recover the par value; but, having the right to proceed in equity, if the Receiver does so proceed, it would seem, necessarily, that his rights and those of the stockholders must be determined in accordance with the rules and methods of administering justice by which courts of equity are governed.

In a suit at law, against a stockholder, to recover a fixed amount, the form of proceeding does not admit of any inquiry by which the amount sued for may be diminished upon the equitable consideration that there are other persons similarly circumstanced and liable; and that a smaller contributive share by all would suffice to meet the exigency, the ascertained deficiency of the assets. But the forms of proceeding, and the methods of remedy and relief in a court of equity are perfectly adapted to such inquiry, and to a ratable apportionment of the entire amount to which all are bound to contribute.

This extraordinary and purely statutory liability of the stockholders is to be enforced only when the assets

of the Bank have been exhausted. This does not mean that the Comptroller must wait until all the available assets have been realized, and the worthlessness of all that have not been collected has been established; but that it must be ascertained what the actual indebtedness of the Bank is; what amount, as nearly as it can be ascertained, the realizable assets will pay, and what sum must be contributed by the stockholders to pay the remainder. The liability of the stockholders is equal, ratable, and not one for another, according to the express terms of section 12 of the Banking Act. That is, when the amount of the deficiency is fixed, the contributive share of each stockholder is ascertained by comparing that amount with the entire capital stock, and thus establishing the percentage of the entire capital, which will equal the amount to be paid. This percentage on each share of the stock is what each shareholder is liable for; and the extent of the liability of each is not dependent upon the solvency of any of the stockholders; otherwise those who are solvent would be liable for those who are not solvent.

The capital stock of this Bank was $500,000, divided into 5000 shares of $100 each; and the liability of each stockholder is for as many five-thousandth parts of the entire deficiency as he holds shares of stock.

The proof shows that the entire amount of liabilities proven up to January, 1876, nearly three years after the affairs of the Bank had been placed in the hands of the Receiver, was $641,780 15; that up to that time

collections had been made, and dividends amounting to $383,189 55 paid to the creditors who had proven their claims, leaving balance of proven liability, $258,590 60.

The claims not proven amounted to $75,644 64. The greater part of this amount was represented by sterling bills; and these claims were not proven because they were secured, the greater part of them, out of the Portfolio of the Bank, and the holders paid themselves in full.

Against this indebtedness there are some $6400 in the treasury; good assets, in the shape of judgments mainly, amounting to $12,467 91; real estate, estimated at $10,000; about $50,000 in the hands of the London Receiver of Lizardi & Co., and some $15,337 76, which the Receiver considers himself entitled to recover of the secured creditors, being the excess of the amounts which they have received over the dividends to which they would have been entitled if they had surrendered their securities and proven their claims. There are, also, overdrafts amounting to $89,804 89, part of which may be recovered. See testimony of Case, Receiver, 79 to 85, 86 to 90, and 102.

It does not seem probable, therefore, that the amount required to pay the actual indebtedness of the Bank will exceed the balance of the proven claims, $258,590 60, because the probabilities are that the realizable assets will suffice, at least, to pay the interest, and there may remain something to be attrib-

uted to the capital of the debt. Assuming this as the amount to be paid, a contribution of less than 52 per cent would suffice.

According to the testimony of the Receiver, p. 89, the entire liability of the Bank, proven and not proven, is $721,424 79. The greater part of this consists of Sterling Bills aggregating £111,000, the equivalent of which is the sum of $604,959 25, pp. 105, 106. These bills were drawn by the Bank on Lizardi & Co. at sixty days after sight. The Bank did not have money in the hands of Lizardi & Co., and the Bills so drawn were to be provided for by timely remittances. Remittances to the amount of £80,000 were made, but they were not applied to the Bills, and the greater part has been lost to the Bank; and there were £31,000 of the Bills for which there was no attempt to provide. The $50,000 in the hands of the Receiver of Lizardi & Co., consisted of remittances *in transitu*, at the time of the failure of Lizardi & Co., which went into the hands of their Receiver, and they or the proceeds are held subject to the litigation growing out of the claim of the Bank. See Testimony of Faurie, pp. 37, 38, 40.

The aggregate of these Bills exceeded by more than $100,000, the amount of the capital stock of the Bank. Section 36 of the Banking Act declares: "That no "association shall at any time be indebted, or in any "way liable, to an amount exceeding the amount of its "capital stock at such time actually paid in and re-

" maining undiminished by losses or otherwise, except " on the following accounts."

The third exception is: " On account of Bills of Ex- " change or drafts drawn against money actually on " deposit to the credit of such association, or due " thereto."

This section is certainly a limitation of the power of the Bank to contract, and it is a wise, prohibitory law. The only question seems to be the nullity which results from engagements *ultra vires*. If the Bank cannot be indebted, or in any manner liable beyond the limitation, the stockholders cannot be liable. There may be apparent hardship to the bill holders in this view of the law; but where liability is purely statutory, it is no hardship to restrict it to the terms of the statute. The distinction is clear between those real transactions in which the Bank, having mo[illegible] at its disposal, places it in a distant city, and makes profit by selling Bills, usually at sight, drawn against that money, and those kiting operations in which the Bank, having no money deposited, draws at sixty days sight, intending to anticipate its means and probable profits, and to provide by remittances which it hopes to be able to make in time to meet the maturity of its Bills.

Every dealer in Bills understands that a Bill at sixty days after sight, is not drawn against money actually on deposit to the credit of the drawer; and every one who discounts or buys a Bill at sixty days after sight, understands that it is a credit business, between the

drawer and the drawee. Such Bills are an inferior grade of paper, so understood to be, and, necessarily, of less value on the market. Every holder takes such Bills at his peril; and where the liabilities of the Bank, not on account of its circulating notes; not on account of deposits or money collected; not on account of Bills or drafts against money actually deposited to the credit of or due to the Bank, and not on account of liabitities to Stockholders for dividends, and reserved profits, exceeds at any time, the amount of the capital stock, it is inequitable that the Stockholders, who have paid their subscriptions in full, should be held liable on account of Bills drawn purely on credit, more specially where, as in this case, the aggregate of the Bills outstanding and dishonored, exceeds the entire capital stock of the Bank. If the stockholders are not liable on account of these time Bills drawn on credit, the actual deficiency of the assests will be small, less than twenty-five per cent. of the capital stock.

The theory of this appeal is that appellants are not concluded by the action of the Comptroller, because they were called into a tribunal in which justice is administered and relief afforded in accordance with equity and good conscience. If this theory be correct, and this Court can take cognizance of the facts as they are proven in the Record, it will be manifest that the demand of seventy per cent. is excessive and burdensome; and that appellants are equitably entitled to relief. They respectfully submit that the decree of

the Circuit Court against them should be reversed and the cause remanded that an account may be taken, and the liability of the stockholders fixed according to the principles which the Court may deem equitable and just, and may be pleased to announce; and that their liability may be restricted to such amount as may be necessary to pay their respective contributive shares of the actual deficiency, on account of which they may be legally bound.

HENRY J. LEOVY,

Of Counsel for Appellants.

New Orleans, 28th February, 1879.

In the Supreme Court of the United States.

October Term, 1878.

GERMANIA NATIONAL BANK OF NEW ORLEANS,
APPELLANT,
vs.
CASE, RECEIVER.
No. 217.

Appeal from the Circuit Court of the United States for the District of Louisiana.

BRIEF FOR APPELLANT.

The pleadings here are in the usual form of a bill in equity to compel contributions from the various stockholders of the insolvent bank on the order of the Comptroller of the Currency. The bill asks for a discovery and a decree that the said defendants pay 70 per cent. of the par value of each share "OWNED *by them at the time when* "*their respective liabilities to such contribution became* "*and was fixed by the insolvency of the Crescent City* "*National Bank, without regard to any pretended trans-* "*fers of such stock which they may have pretended to* "*make after such insolvency and such liability had ac-* "*crued,*" &c.

See Record, pp. 1 to 8, inclusive.

The appellant answered by a general and special denial of all the receiver's allegations, and averred that it never was the OWNER of any shares in the insolvent bank, and never had any right, title, or interest in said shares except as PLEDGEE thereof, &c., &c. There was a replication, then a withdrawal of replication, and an amended bill; then an answer to this and a replication. A trial on the merits resulted in a decree against the appellant for the full amount claimed.

Record, pp. 10 to 20; decree on p. 112.

FACTS OF THE CASE.

Feb. 15, 1872, the Comptroller of the Currency authorized the Crescent City National Bank of New Orleans to commence the business of banking under the act of June 3, 1863.

Rec., p. 56.

March 18, 1873, the Comptroller declared the bank insolvent, and appointed a receiver.

Rec., pp. 56, 57.

July 23, 1874, the Comptroller ordered the institution of this suit, to enforce the personal liability of the stockholders owning shares at the date of the suspension, (March 17, 1873.)

Rec., p. 58.

August 26, 1857, the original capital of the Crescent City Bank, under its State charter, was $1,032,800.

Rec., pp. 60 to 71.

December 24, 1866, the capital was reduced to $500,000. *March* 14, 1868, and then to $300,000.

Rec., pp. 72, 73, 74.

March 25, 1871, and then raised to $400,000 by *a financial operation:* 5 shares, nominally $30 each, reduced to one share of $100, and the capital *subscribed* not less than $400,000.

Rec., p. 75.

[We understand that the capital at that date was actually reduced to $200,000, and an additional capital of $200,000 *subscribed.* This additional subscription *to be* paid into the bank in cash.]

The alleged capital of the bank under the national banking act is $500,000.

See Rec., pp. 49, 106.

December 7, 1872, the Germania National Bank discounted for Phelps, McCulloch & Co. their note, to the order of themselves, and by them endorsed for $14,000, dated on that day and payable ninety days after date. On the same day, to secure the payment of the said note, the firm *pledged* to the bank 100 shares Crescent City National Bank, in two certificates of 24 and 76 shares, and 55 shares Mutual National Bank, with power to sell in default of payment at maturity.

Rec., pp. 15, 16, 91, *et seq.*

February 13, 1873, De Lizardi & Co., stopped payment, and if the receiver's advices be true, that firm appropriated to their own purposes the remittances made to them

by the bank to pay its drafts, leaving $604,259.95 entirely unprovided for.

Rec., pp. 105, 37.

This blow seems to have proved subsequently fatal. The deposits were all withdrawn, and the holders of exchange became alarmed and asked for security.

Rec., p. 37, *et seq.*

March 10, 1873, Phelps, McCulloch & Co.'s note was protested. The 100 shares of Crescent City National Bank stock still existed in the name of that firm on the books of that bank; but the certificates were accompanied by powers of attorney from that firm. Under instructions from the president of the Germania Bank, Herman Roehl, cashier, transferred on this day, under these powers, the entire 100 shares of Cresent City Bank stock to the Germania National Bank, and at the same time, apparently without any power from the bank, he transferred 76 shares to W. A. Waldo. The very next day, *March* 11, 1873, the same Herman Roehl, cashier, transfers the remaining 24 shares to the same W. A. Waldo.

Record, p. 77, series A. On Record, p. 78, series B.

These transfers were all made in conformity with the custom of the bank, "in order to avoid any seizure on the "part of other creditors," and "because the Germania Na- "tional Bank is not in the habit of holding any bank stocks "at all, and for that reason we transferred them to him." (Record, p. 91 *et seq.* Testimony of Roehl and Cassard.) It is asserted in the answer of the bank that the transfers were made to Waldo, as agent of the bank, in good faith, and mainly to protect the rights of the Germania Bank as

the PLEDGEE of said shares. (Record, p. 12.) And no counter-proof of any kind on this point has been offered by the complainant.

March 17, 1873, protest of the circulating notes of the Crescent City Bank.

Record, p. 58.

March 18, 1873, Receiver appointed.

Record, p. 57.

The Germania Bank was never *recognized as a stockholder* on the books of the Crescent City Bank. [See share list, Rec., pp. 107 to 110.] *No certificate of shares was ever issued to it.* (Rec., p. 92, at foot.) The last sale of shares in open market was made *March* 10, 1873.

Record, p. 49.

ASSIGNMENT OF ERRORS.

The lower court erred—

FIRST. In decreeing the transfers to Waldo from the Germania Bank void, and the transfers to Germania Bank from Phelps, McCulloch & Co., through Cashier Rochl, valid All these transfers were contemporaneous, made in good faith and for an honest purpose, and they form but one transaction. They were not *shams.*

SECOND. In decreeing the liability of the Germania Bank in the amount sued for as OWNER and PURCHASER of these shares.

THIRD. In decreeing that the transfers on the books of the Crescent City Bank of the one hundred shares were

within the sphere of duty of the cashier of the Germania Bank.

FOURTH. In not dismissing the bill as to the Germania Bank, this bank having no interest in the shares at any time either as PURCHASER or OWNER; and the real owner of the shares being Phelps, McCulloch & Company.

FIFTH. And in not entering up a final decree in favor of the Germania Bank.

POINTS AND AUTHORITIES.

FIRST. (*a.*) It is clear that prior to the date of the transfers, March 10, 1873, the Germania Bank was not under legal liability of any kind whatever, either to the Crescent City Bank or its creditors, but was simply a *pledgee*, with power to sell under condition. By the various transfers, no intent to defraud the insolvent bank or its creditors was manifested; and no injury to the creditors has been effected. No device was made to screen the actual owners of the shares from liability. The intent was to maintain and uphold the existing legal relations of all parties; to preserve the rights of the Germania Bank as *pledgee* of the shares. We submit, there is "*no sufficient cause*" shown by the facts of the case for making the appellant liable as *owner and purchaser* of these one hundred shares of the Crescent City Bank. The only question in all these cases is: who were the shareholders entitled to the profits and liable for losses, on the date of the ordered liquidation; who was the *holder and owner?*

Sanger *vs.* Upton, 91 U. S., 56–63.
Casey *vs.* Galli, 94 U. S., 673.

(*b.*) The discovery in this case reveals all the facts. It

cannot be denied; then, that the owners of the 100 shares are Phelps, McCulloch & Co., the Germania Bank is the pledgee, and Waldo the agent or trustee for both owners and pledgee. These facts exclude the notion of any liability on the part of the appellant. All that was done was perfectly regular and entirely legal.

Talty *vs.* Freedman's Bank, 93 U. S., 321–4.

SECOND. (*a.*) The liability of pledgee, as owner and purchaser, when he transfers the shares pledged to himself on the books of the company and takes a certificate therefor, is founded on the principle that he who derives the advantage ought to sustain the burden. No such intent on the part of the appellant is anywhere exhibited in this record. Its acts were not done *lucri causâ*. No profit could possibly accrue to the Germania Bank from the transfers.

THIRD. The sphere of official duty, the scope of the employment of the cashier of the appellant, did not include the power to make the Germania Bank liable as shareholder of the Crescent City Bank.

It is clear that the shareholders of the Germania Bank are at all times subject to the personal-liability clause of the National Bank act. But this, the act of its cashier, doubles this personal-liability clause, and makes the stockholders of appellant liable also on the shares of the Crescent City Bank. *This is making bad worse.*

Fleckner *vs.* Bank, 8 Wheat., 338.
Minor *vs.* Bank, 1 Peters, 46.
U. S. *vs.* Bank of Columbus, 21 How., 356.

Would an assignee in bankruptcy making title to shares in a national bank surrendered by a bankrupt, receiving title by a transfer to himself, and making title to a pur-

chaser in insolvent circumstances, make the bankruptcy responsible under the personal-liability clause?

A resolution of the board of directors was required to change the equitable securities into complete legal transfers.

The substance, rather than the form of the transaction, should be regarded; the nature of the functions undertaken by Waldo, the trustee, "rather than to the machinery "by which those functions were created."

Levi *vs.* Ayers, L. R., 3 Appeal Cases, 853.

FOURTH. The discovery obtained shows the exact legal relations of these parties. Phelp, McCulloch & Co. are proved to be the owners of the shares: the Germania Bank is shown to be the pledgee; Waldo, the agent to preserve the legal relations. The receiver can hold but one of these parties; he sets aside Waldo, and is therefore bound to proceed against the real owners alone. The receiver shows the court the exact truth of the matter, and cannot ask for a decree discordant with the judicial matters of fact of the case. The prayer of the bill is for a decree for $70 "for "and upon each and every of the shares of said capital "stock of said bank OWNED by said defendants, respec- "tively," &c. (Rec., p. 7.) The fact is uncontested and beyond all doubt, that the Germania Bank never *owned* the shares in controversy.

(*b.*) The transfers are clearly proved to be mistakes in every way. The appellant was under no liability as owner or purchaser. Its officers acted on an error, hastily and without consideration, as to the real position of the failing bank, and in ignorance of the legal relations. In the eye of the law, appellant has never been a shareholder in the Crescent City Bank. The acts of its officers were intended

for the very opposite purpose, and were done to avoid this very responsibility of shareholder. No one can incur a liability of shareholder who is a mere conduit-pipe for the conveyance of title; who receives and conveys title at the same time *bona fide*. It is only the legal fraud of a *real* stockholder transferring his shares to avoid liability which is denounced. Neither the officers of the appellant nor the appellant itself ever consented by any declaration of their will to be stockholders. A blunder of this sort cannot be made the basis of either legal or equitable liability.

The Reciprocity Bank, 22 N. Y., 17.

(*c.*) "The distinction is very properly drawn between a "person who wants to get rid of his shares because the "company happens to be a failing company, and a person "who wishes to put them in the name of a trustee."

Mitchell's Case, L. R., 9 Equity, 365.

Fifth. We deny any power or authority in the appellant to deal in stocks of any kind. The act confers none. *Expressio unius exclusio alterius.* The bank had no power to lend on its own shares; *à fortiori* was it without authority to lend on shares of another National Bank. "*Debts are not property;*" nor are shares of National Bank stock assets only, but liabilities. Both property and liability are their inexpugnable, prime elements: but, "in-"dividual liability is repugnant to the law of corporations." (92 United States, 512, Carroll *vs.* Green.) Hence, no National Bank can lend on the shares of another National Bank, because it cannot own these shares without encountering the personal-liability clause of that bank, and virtually doubling the personal liability of its own stockholders. The meaning of "shares of stock," in common

parlance, negates all personal liability, and asserts property, value, assets. The ownership of National Bank shares is identified with legal responsibility. When it is said that, though a bank may not deal in stocks, yet "stocks may be accepted in payment and satisfaction," the reference is to the former, and not the latter class of shares. The whole spirit, policy, intent, and express provisions of the national banking act not only prohibit dealing in stocks, but are in direct antagonism to dealing in shares of other National Banks. Dealing, negotiating, trafficking, exchanging in and with these shares manifestly covers a loan upon them as collateral security, as well as a purchase or sale. The whole system of National Banks could be evaded if this were not the law, by establishing two banks instead of one; and PAID-UP capital, the basis of the entire system, would thus be a mere *sham*, *as in the present case*.

Bank *vs.* Bank, 92 United States, 128.
Fowler *vs.* Scully, 72 Penn., 456.
R. S. United States, 5136, 5200, 5201, 5202, 5203.

We pray your Honors to reverse the judgment and dismiss the bill.

Respectfully submitted.

DURANT & HORNOR,
Att'ys for Appellant.

WASHINGTON, D. C., *February* 12, 1879.

Supreme Court United States.

OCTOBER TERM, 1878.

No. 217. Appeal.

GERMANIA NATIONAL BANK & OTHERS, Appellants,

vs.

FRANK F. CASE, RECEIVER OF CRESCENT CITY NATIONAL BANK, Appellee.

BRIEF FOR APPELLEE.

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Thomas McGill & Co., Law Printers, 1107 E Street Northwest.

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Supreme Court of the United States.

OCTOBER TERM, 1878. No. 217.

GERMANIA NATIONAL BANK, NEW ORLEANS, CRESCENT MUTUAL INSURANCE COMPANY, BENJAMIN J. WEST, AND ALCUS, SCHERCK & AUTEY, APPELLANTS,

vs.

FRANK F. CASE, RECEIVER OF THE CRESCENT CITY NATIONAL BANK, NEW ORLEANS, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA, IN CHANCERY.

BRIEF FOR APPELLEE.

PREFATORY.

This was a suit, in the court below, against all the shareholders of the Crescent City National Bank, who were such when said bank suspended, to enforce their liability, as prescribed by the National Bank Act, (Rev. Stats., sec. 5151,) pursuant to the order of the Comptroller of the Currency directing such enforcement to the extent of 70 per centum of the par value of each share of stock. As the

order was to collect only 70 per cent., the suit was brought in chancery, following the ruling of this court in *Kennedy v. Gibson*, 8 Wall., p. 508. Some defendants made no resistance in the court below, and against such decrees were duly entered *pro confesso*. Others answered, and attempted to defend on various grounds; but, failing, were content to abide the decision of the Circuit Court, rendered against them. Four only of these defendants have appealed to this court, namely, the Germania National Bank, the Crescent Mutual Insurance Company, the firm of Alcus, Scherck & Autey, and Benjamin J. West. These are the appeals now to be considered. The court below (see Record, pp. 111–113) found that said appellants were severally shareholders, and liable, as alleged in the bill of complaint, and therefore rendered a decree against the said Germania National Bank for $7,000; against said Insurance Company for $9,100; against said Alcus, Scherck & Autey for $4,900; and against the said B. J. West for $4,060;—the said amounts being equal, respectively, to 70 per centum of the stock of said several appellants owned by them at the time of the failure of said bank.

All these appeals are embraced in one record, which is docketed in this court as one cause; but, in fact, each appeal differs in its defense from all the others, and so, practically, there are four cases to be argued and disposed of. No brief has yet been put in for either of the appellants; consequently, the writer can only conjecture what points will or may be made in behalf of each; but, because of other engagements, he cannot longer prudently delay the preparation of his own brief.

Substance of the Bill.

The bill was filed on the 1st of August, 1874, containing all the necessary preliminary averments as to the organization and failure of said Crescent City National Bank,

thereby showing that said bank had been a State organization prior and up to February 15, 1872, when, by due proceedings had, it was changed from a State to a National bank, under the provisions of the National Currency Act. (Record, p. 3.)

It is further averred, that said bank was duly protested upon its circulating notes on the 17th of March, 1873, and soon thereafter was placed in the hands of a receiver; and the said complainant, Frank F. Case, at the filing of said bill of complaint was, and is still, such receiver. It is also shown, that the assets of said bank were and are insufficient to pay its indebtedness; that the Comptroller of the Currency has ascertained such fact, and accordingly ordered the enforcement of the personal liability of the shareholders to the extent of 70 per cent. of the par value of the stock held by each at the date of the failure of said bank. It is then averred, that the said Germania National Bank at said date was the owner of 100 shares of said stock; that said Crescent Mutual Insurance Company was the owner of 130 of said shares; that the said Aleus, Scherck & Autey owned 70 shares; and that the said B. J. West owned 58 of said shares at said date. The bill avers amicable demand and refusal to pay, and prays a decree against each of said defendants to the extent of 70 per cent. of the par value of the stock owned by each.

There is also in the bill, an averment, that in all probability a further assessment will be necessary in order to discharge the entire indebtedness of said bank, and the court is asked not only to decree the payment of the said 70 per cent., but to continue said cause pending in said court, so that if necessary at any future time a further decree may be entered for any additional assessment required.

Proper and pertinent interrogatories were filed with the bill, having reference to transfers of stock in some instances made, as was believed, to avoid the liability imposed by the currency act. That there was occasion to believe that

numerous such transfers had been made, may be legitimately inferred from the report of the first receiver, offered in evidence by the respondents. (See Record, p. 105.) One such attempted evasion of the law is brought to light in the original and supplementary answers of Alcus, Scherck & Autey; and, coming to the answers, we will first give the substance of the answer of these last-named respondents.

ANSWER OF ALCUS, SCHERCK & AUTEY. (See Record, pp. 23–25.)

These respondents admit that the Crescent City National Bank was originally a State bank, and ultimately became a National association under the currency act. They admit that the capital was in amount as charged, and that the bank failed to redeem its circulating notes, as is alleged in complainant's bill. They neither admit nor deny that the bank was legally put in liquidation, or that the complainant is the receiver; but they *do* deny that any case is made out to justify the decree sought; and "for plea say" (in the body of their answer) "that no such proceedings as are herein [that is, by said bill] taken against the stockholders of said bank and these respondents can be had or legally maintained, until the Comptroller or receiver shall have exhausted the assets or credits of said National bank outstanding."

Further answering, they aver that a large amount of assets remains uncollected; and they specify the pendency of many suits brought to recover back large sums illegally paid out. They characterize the order of the Comptroller as "a pretense," based on rough estimates and wholly unwarranted in law. They are informed and believe that there is no deficit of assets, and deny that there is any; but in any event they assert that they are only liable individually, equally and ratably, in the proportion of one-five-thousandth of such deficit for each share of stock by them

held and owned. They admit that demand of payment was duly made upon them before the commencement of this suit.

In answer to the fourth interrogatory of the bill, they say they did at one time own 70 shares of the stock of said bank, stating how, at different times, it was acquired; but that before the failure of the bank, to wit, on the day of , 1873, they sold the 70 shares to Julius Fox at $5, and that they made such sale because they feared the bank would fail, and they considered the stock a bad investment. This original answer was sworn to April 5, 1875. On the 2d March, 1876, (nearly one year later,) these defendants filed a supplemental answer, in which answering they admit they were shareholders of the stock of the said Crescent City National Bank at the time of its failure and suspension in the manner and form and to the number of shares as alleged in said bill; thus no longer insisting upon their alleged sale of shares to the said Julius Fox. We pass to the

ANSWER OF THE CRESCENT CITY MUTUAL INSURANCE COMPANY. (Record, pp. 28, 29.)

The answer of this company admits that at one time the company owned 645 shares of the stock of the Crescent City Bank. In July, 1871, these shares were decreased in number and raised in par value to $100 per share, and thus this company was entitled to 129$\frac{1}{5}$ shares, to which new stock the insurance company added in cash $80, and thus became entitled to 130 shares, and for this number they received certificates accordingly, which they still hold. The company has never received certificates for shares in the *National* bank, and they deny that the company is a shareholder in said National bank, unless the foregoing facts constitute them in equity such shareholders, but do not deny that said Crescent City Bank was changed to a

National bank, as alleged in their answer to the interrogatories. The company admit that they favored the change to a National bank, and that, by a vote duly passed, they authorized a Mr. Newman to sign an agreement converting the Crescent City Bank into a National association, and that since the change they have received dividends from the National bank.

In answer to the third and fourth interrogatories, they deny the transfer of any stock for the purpose of avoiding liabilities, though it is quite possible that at one time the company did attempt to transfer at least forty shares of its stock to one Morris Dyer, a colored man, who was the porter of said company, in whose name on the stock ledger forty shares were standing at the date of said failure. (See Record, p. 109, and testimony of Adams, on p. 46.) Said insurance company deny that the assets of the bank are insufficient, or that it has become necessary to enforce the individual liability of shareholders to pay the debts. They further deny the authority of the Comptroller to determine such necessity or order the enforcement of such liability.

THE ANSWER OF B. J. WEST. (Record, pp. 30, 32.)

This defendant, answering, admits that there was a State bank called the Crescent City Bank, and that it was subsequently changed to a National organization; but in what form and method, whether legally or not, the defendant does not know. He admits that said National bank failed as alleged in complainant's bill, and he believes from the causes therein assigned. From information, he admits that said bank was insolvent when it suspended.

As to the amount and value of the assets of said National bank he has no knowledge, nor has he any knowledge as to the necessity of enforcing the individual liability of shareholders. He knows nothing as to the insolvency of the debtors of said bank, and has no opinion; he denies that it

is necessary to call upon the shareholders of said bank for 95 or 70 per cent. of the par value of their shares. He further denies that at the date of said failure he was the owner of any of the stock of said bank, or that he was then in any way interested in any share of such stock.

In answer to the first interrogatory, he says that on the 9th of February, 1870, he bought forty shares of the stock of the Crescent City Bank at $25 each, which were afterwards converted into eight shares of $100 each. On the 1st of January, 1871, he subscribed for fifty shares additional at $100 each, and these fifty-eight shares were subsequently converted into the same number of shares in the Crescent City National Bank.

In answer to the second interrogatory, he says that he did not own any shares at the date of the suspension of the said bank.

To the third interrogatory, he answers that on the 13th of March, 1873, he sold all his said shares to one G. W. Vincent, a white man, of the age of 35 years, a salesman by occupation, and that said sale was for *about* ten dollars per share.

To the fourth interrogatory, he answers that he did not sell said shares to avoid personal liability as said shareholder; that he did not know he had incurred such liability, nor did he then *know* that said bank would break. The president had told him that the bank would not lose over $125,000 by the failure of Lizardi & Co., of London. Said answer closes by the general denial of the right of complainant to the relief prayed by the bill. We come lastly to the

ANSWER OF THE GERMANIA NATIONAL BANK. (Record, pp. 10–14.)

The answer of this defendant admits the failure of the Crescent City National Bank, and the appointment of a

receiver therefor, as alleged in the bill. It denies that the assets are insufficient to pay the liabilities, or that there is any necessity to resort to the personal liability of shareholders to pay the indebtedness. Said answer further denies that the Comptroller has taken such action as is required by the laws of the United States to make shareholders individually liable, and submits to the court whether the Comptroller has or had the right to decide upon the necessity of calling upon the shareholders individually.

The answer denies that defendant was a shareholder, or the representative of any shareholder, in manner as alleged, at the time of the failure of said Crescent City National Bank, and says that said defendant never was, and is not now, a shareholder, and never pretended to have any interest as such, *save as hereinafter stated.*

On December 7, 1872, said defendant bank discounted the paper of Messrs. Phelps, McCulloch & Co. for $14,000, at ninety days, and on the same day said Phelps, McCulloch & Co., to secure the payment of said paper, among other things transferred and pledged to defendant one hundred shares of the capital stock of said Crescent City National Bank, said transfer and pledge being, by act in writing, duly attached to said answer.

The paper of Phelps, McCulloch & Co. was not paid at maturity, but was protested March 10, 1873; and on the same day the defendant caused said one hundred shares to be transferred on the books of said Crescent City National Bank to the name of said defendant, said defendant in so doing only acting by virtue of its right as pledgee as aforesaid. On the same day defendant caused seventy-six of the said shares to be transferred on the books of said Crescent City National Bank to one William A. Waldo, as the mere agent of said defendant, (the said Waldo being a clerk in the employ of the said defendant bank;) and on the 11th of March defendant caused the residue — to wit, twenty-four of said shares — to be similarly transferred to

said Waldo, and thus the said shares still stand and remain in the name of the said Waldo on the books of the said Crescent City National Bank, the same having been transferred to him as the mere agent of the defendant bank, and to protect its interests as pledgee; and said Waldo has since deceased.

Said defendant, further answering, says that said transfers were made prior to any act of bankruptcy on the part of said Crescent City National Bank, and that at and prior to the time of said transfer said shares were worth and could have been sold for $30 per share; and if defendant had suspected the insolvency of said Crescent City National Bank, said transfers would not have been made; and said defendant submits that it is not and should not be held liable as shareholder to pay any sum whatever in discharge of the indebtedness of said bank.

The answer to the interrogatories accords, in substance, with the general statements in the body of the answer, setting forth the same pledge of stock to said defendant bank, and the transfer thereof to said Waldo, as specified in said answer.

TESTIMONY.

Replications having been duly filed to each answer, a large amount of testimony was taken on both sides. The general evidence in chief on behalf of complainant may be summarized as follows:

1. Certain exhibits found in the record designated by letter, and at the pages following, viz.:

Exhibit "A," pp. 53–56, being the articles of association of the said Crescent City National Bank.

Exhibit "B," p. 56, being the organization certificate of the Comptroller of the Currency.

Exhibit "C," pp. 56, 57, being the commission of Charles Case as first receiver.

Exhibit "D," p. 57, being the commission of Frank F. Case, the second and present receiver.

Exhibit "E," p. 58, CERTIFICATE *and* ORDER *of the* COMPTROLLER *of the* CURRENCY, stating that he had found and determined it to be necessary, in order to pay the liabilities of said Crescent City National Bank, to enforce the personal liability of the shareholders thereof, as prescribed by law, to the extent of 70 per cent. of the par value of the stock owned by each at the date of the failure of said bank, and therefore ordering collection from all such shareholders to said amount of 70 per cent.

Exhibit "F," pp. 58, 59, being the protest by a notary public of sundry of the circulating notes of said bank for non-payment, which protest is dated March 17, 1873.

Exhibit "I," pp. 60–72, being the charter of the Crescent City Bank.

Exhibits "K," "L," "M," pp. 72–77, being extracts from the records of the Crescent City Bank, showing sundry changes in the par value of shares; said Exhibit "M" showing that said Crescent City Mutual Insurance Company was then a shareholder for six hundred and forty-six of the original shares of said bank, or one more than is asserted by their answer. It also appears that said Aleus, Scherck & Autey then owned one hundred of said original shares. This was March 25, 1871, and prior to the raising in value and decrease in number of said shares.

The foregoing general evidence, it is believed, is entirely sufficient to sustain the decree of the court below against said Aleus, Scherck & Autey, and against said Crescent Mutual Insurance Company. It is also material as to the other appellants; but as to these there are additional proofs, as follow:

2. The transfers, as alleged, of the stock of Phelps, McCulloch & Co. to said Germania National Bank and its agent Waldo, deceased, which appear in the record at pp.

77, 78, as Exhibits A^2, B^2; and on pp. 78, 79 are shown the alleged transfers by appellant West to George W. Vincent.

3. Complaimant offered oral testimony, portions of which are material. CHARLES FAURIE, cashier of said National bank, testifies to and indentifies the *transfer books* of said bank, (see p. 35,) and on page 36 the receiver is sworn, and produces the minute book or record of the proceedings of the directors of said bank as to the various changes in the par value of shares. The said Charles Faurie testifies (pp. 37, 38) that said Crescent City National Bank suspended payment of the checks of depositors March 14, 1873. He says said bank lost heavily by the failure of D. Lizardi & Co., its correspondent house in London, which failed February 13, 1873; that as soon as its failure was known in New Orleans, depositors in said bank commenced withdrawing their balances. February 13, 1873, the balance to the credit of depositors was $506,526; February 14, the next day, this balance was $403,930, showing a withdrawal in twenty-four hours of $102,593. On the 25th February said balance was reduced to $99,971, being a difference of $406,533 in twelve days. On March 1 said balance was $28,956, and on the 16th of March it was reduced to about $3,000. This witness swears that the loss by said Lizardi & Co. was £80,000 sterling; that many creditors of the bank, becoming uneasy, asked and obtained security, which was given, by paper taken from the "portfolio," to an amount over $170,000; but that suits were then pending, instituted by the receiver to set aside these preferences and recover back the paper thus transferred. Other testimony shows that these suits were largely successful.

Complainant then called E. C. PALMER, a merchant and president of a bank, resident in said New Orleans, (Record, pp. 47, 48,) who testified that he had the means of know-

ing the condition of many of the New Orleans banks, and especially of this bank, about the time of its failure; that the failure of Lizardi & Co. in London was known in New Orleans the next day, and the witness then knew that the said Crescent City National Bank was insolvent. Witness had, before that time, purchased ten thousand pounds of the bills of said bank upon said Lizardi & Co., upon which he had realized nothing. He adds, that "after the failure of Lizardi & Co. the financial standing of the Crescent City National Bank was gone." "The general impression in the community was that the bank was irretrievably ruined, and this discredit appeared in financial circles the day the news reached New Orleans of the failure of Lizardi & Co."

C. M. SORIA, a defendant, was also sworn by complainant. (See Record, pp. 48–50.) By his evidence it appears that he had been a director of the Crescent City National Bank two or three years; that 156 shares of the stock of said bank stood in his name, but that he was the *bona-fide* owner of only 56 of said shares; that he took the 100 shares at the instance of the president of said bank, in order to raise its capital stock to $500,000, and only held said 100 shares as the trustee of the bank, although, in order to make the transaction appear business-like, he gave his notes for the amount of said stock on long time. (Probably not expecting ever to pay them, though after the failure he did arrange to pay them at the rate of $400 per month, and under this arrangement paid $400.) He further testifies, that at the time of the panic, to wit, March 8, 1873, he transferred all of this stock to one McCoughen, who was his brother-in-law. The date of the transfer appears on page 49, and on page 50 he says: "I transferred this stock at the time of the panic; I did not know what to do; I had but little; I was satisfied the bank would fail, &c.; and in a moment of panic I transferred it to get it out of my hands, and to relieve myself of stock that did not belong to me." McCoughen paid nothing, nor did he agree to pay anything

for said stock, and was not consulted, nor did he know anything of said transfer; and the witness swears that he made the transfer to relieve himself from liability. On page 49 he testifies that there was subsequently, to wit, on March 10, a *bona-fide* sale of 56 shares to the firm of Mumy, Schroeder & Co. for $37 per share. This sale was made through a broker named Bienevue, and this transaction is worthy of note, in connection with other testimony as to the liability of said Germania National Bank, as will in due time appear. (Here it may be noted that the 100 shares appear on the transcript from the stock ledger (Record, pp. 108, 109) in the name of said McCoughen, but the court below held Soria liable for the said shares, and a decree was entered accordingly for $7,000, from which he does not appeal.)

B. J. West, one of the appellants, was also sworn as a witness at the instance of complainant. (Record, pp. 43, 46.) He testifies, in substance, that he was a shareholder for fifty-eight shares, and had been a director in the old, but not in the National bank. On the 13th of March, 1873, he transferred his stock to one Vincent. The bank was then doing business (though it is to be noted that it stopped payment of depositors' checks the next day). He does not think any certificate was issued to Vincent. The price was $10 per share. He cannot say what the amount of the consideration actually received was, because it was mixed up with other matters, and after the failure of the bank he (Vincent) said he thought he ought to be exonerated. The consideration was a balance of account, and a portion of it has not been paid yet. Did not believe Vincent to be then insolvent. He was a clerk in the employ of West, at a salary of $2,100 per year. West proposed to him to sell, and he agreed to buy, without any understanding to exonerate him if the bank failed. Did not make the transfer with intent to avoid liability, and gives the reason why, namely: "His knowledge of the condi-

tion of the bank was very indistinct. The president told him, a day or two before, that the loss by Lizardi & Co. would leave the stock still worth $50 or $60, but other parties told him it was worse; and, not having any facts before him, and not knowing anything, he concluded it was best to sell." "Did not suspect the failure, but, as it was one of the facts he could not foresee, he thought it best to sell out." There was no written contract. Vincent was in Mississippi, when witness last heard of him, engaged there in farming, as he understood. He continued to act as clerk for West for some six or eight months after the sale. Witness was not in his debt, except for salary, at the date of said sale, and he (Vincent) continued to draw his salary as it fell due. We quote here some questions and replies:

"Q. Had you paid him for his services up to the date of the transfer?

A. He always drew his salary when due.

Q. Has he drawn his salary since?

A. Whatever was due, he withdrew whenever it was due.

Q. Did you make him any payment in the month of March?

A. I think it very probable he withdrew every month what was coming to him.

Q. He was paid every month regularly?

A. He went to the book-keeper and withdrew his salary whenever it was due; I presume he went and withdrew it."

Don't know that Vincent has any property, and witness has not his present address. Has sold him goods since he ceased to be in his employ, and has sent him accounts, as to all other debtors, for the whole amount due. Has brought no suit to recover the amount, but has written him, urging payment. His reply was, that he had been unfortunate, and was unable to pay. Generally keep all business letters, but did not preserve his. On page 46 he says Vincent "owes him for goods sold him since he left

his employment, *but for nothing before that.*" In reply to another question, he adds: "The price of the stock was never charged to Vincent, because the bank failed in four or five days. I do not think he got a certificate, and he thought that he did not get full value for what he bought, *and I acceded to his request*, and allowed him to draw his salary as usual."

The record contains some 22 pages of testimony introduced by the defendants—pages 79 to 111. A large amount of this relates to the assets and liabilities of the bank as they were at the date of the failure or at the date of giving such testimony, what had been done to collect assets, amounts realized, advances paid, claims allowed and to be allowed, &c. The object of all this proof was to show that the Comptroller had erred in his facts, figures, and conclusion, and that, therefore, his order to collect from the shareholders was unnecessary and unwarranted. The evidence signally fails to establish any such conclusion, even if such proof was admissible; but it was all objected to as incompetent and irrelevant. To the mind of the writer, it is clear that, since the decision of this court in *Kennedy* v. *Gibson*, the admissibility of such evidence in suits to enforce the liability of shareholders of National banks has not been an open question; therefore all this evidence will be no further noticed,—at least not until counsel for appellants show reason for a different course.

The testimony of two witnesses, however, Mr. H. ROEHL, cashier, and Mr. CASSARD, president of the Germania National Bank, has reference to the liability of that association, and contains statements too important to be omitted.

Mr. HERM. ROEHL (Record, pp. 91, 96) says that he was and is the cashier of said Germania National Bank. He then gives an account of the discount of the note of Phelps, McCulloch & Co. for $14,000, and the written pledge of

100 shares of the stock of the Crescent City National Bank as collateral security for the payment of said note. The note matured March 10, 1873, and was protested. He then states the transfer of the stock by him as cashier, and acting also under a power as the attorney of Phelps, McCulloch & Co., such transfer being first made to said Germania National Bank, and on the same day, to wit, March 10, and on the next day, as to a portion of it, to W. A. Waldo, who was then a clerk in the employ of said bank, but deceased before the commencement of this suit. He states that the object of the transfer was to secure the Germania Bank as against other creditors of said firm, and because it was *the habit* of said bank to make such transfers immediately upon the failure of a debtor to pay his note. He states that the stock was transferred to Waldo as the agent solely of said Germania Bank, he to hold the same subject in every respect to the ownership and control of said Germania Bank, and said Waldo having himself not the slightest interest in said shares or any of them. The transfer was made because the bank was not in *the habit* of holding any stock, save its own, in its own name. He thinks no certificate was issued to said Germania Bank, but is confident that one was issued to said Waldo. On cross-examination, he states that the reason why he did not transfer directly to Waldo was that the power of attorney had been filled up in the name of the said Germania National Bank, and he repeats that the said Waldo had no interest in the stock thus transferred, and it was the understanding that he would retransfer at any time upon request of said Germania Bank, of which he was a mere agent or custodian. He knew at the time of said transfers that said stock was considerably below par. "The stock then rated at about $50 per share, but there was nothing about the bank." Witness did not, at that time, know that the Crescent City National Bank was in discredit, nor did he know that it had been crippled by the failure of Lizardi & Co. He ad-

mits that, as cashier of a leading bank in said city of New Orleans, he had facilities for knowing the condition or reputation of banks in that community; but, according to his recollection, said bank did not fail until ten or fifteen days after said transfers were made. He is sure they were not made within three or four days of such failure. Even if they were made within that time, he does not know that he had heard of the failure of Lizardi & Co.; but he had heard of a sale of the stock of said Crescent City National Bank at $35 per share, and this sale was after the failure of Lizardi & Co. This is the only sale that he can name, and that was one made for Soria to Mumy, Schroeder & Co. When asked whether he did not know that the bank had suffered heavily by the failure of Lizardi & Co., his answer was, that "he did not know the extent of that loss." He had no idea of what the market price of Crescent City National Bank stock was within ten days of the failure, but it approached par a few months before that. Sold as high as $85 to $90 per share. Afterwards it dropped to $35. And yet he says he had no suspicion as to the insolvency of said bank, or that it was going to suspend!

We quote from questions and his answers, as follows (Record, p. 96):

"Q. Was not the transfer made with the view to avoid the liability under the National Bank act, in case of such suspension?

A. Well, not *exactly* that way. We simply transferred it, because we are not in *the habit* of holding any bank stock; we didn't want to have any bank stock in our name; that was the object.

Q. You were well aware of the fact that the shareholders of National banks were liable to contribute to the payment of their debts, in cases of insolvency?

A. Yes, sir.

Q. Did you not have that in contemplation at the time of this transaction?

A. That may be one of the reasons why we did not want to own any stock.

Q. *Was not that one of the principal motives of this transfer to Waldo?*

A. *Yes, sir!*"

JULES CASSARD, president of said Germania National Bank, (see Record, pp. 97–100,) states that said transfers of stock were made by the cashier, Mr. Roehl, and he knows nothing of the details; but says they were not made to avoid liability as stockholder of Crescent City National Bank. "If we had suspected the failure of the Crescent City National, we would have sold the stock." Within two or three days of the failure, it was quoted at $35, but he was aware that such quotations were sometimes fictitious. He thinks the failure of Lizardi & Co. was not known in New Orleans until eight or ten days after this stock was transferred to Waldo! Thinks it was transferred before the failure of said Lizardi & Co.

"Q. Then, if it should be a fact that Lizardi & Co. failed a whole month before, and that fact had been generally known in the city of New Orleans among business men, merchants, and in bank parlors, do you think you would never have heard of it?

A. Even if I heard of it, how could I know the extent of the liabilities of Lizardi & Co. in that bank? I did not know that the Crescent City National Bank lost heavily in deposits after the failure of Lizardi & Co. Never heard of it until after the failure of said bank. Never knew of such failure until after it failed.

Q. You never heard rumors that it was in danger?

A. No, sir; I never listen to rumors. I may have heard them, but I do not listen—I will not listen—to *street rumors.*

Q. I ask you nothing about street rumors. But was it not known in bank circles that the Crescent City National Bank was about to fail; and if so, would you have heard it?

A. Yes, sir; I would.

Q. And you never heard of it?

A. No, sir. Never heard before the transfer of said stock that said Crescent City National Bank had obtained large loans and assistance from several banks and bankers, and that this had occurred as early as February, 1873."

He says it was the *custom* of the Germania National Bank to transfer stock that had been pledged to it. Then follow the following questions and answers:

"Q. What stocks were transferred to you as pledgee in March, 1873?

A. I do not know.

Q. What stocks have been transferred to you at any time?

A. Well, we did it lately in the insurance association.

Q. To whom did you make the transfer?

A. To *ourselves.*

Q. Do you still hold that stock in the name of the Germania National Bank?

A. No, sir; the insurance association declined to make the transfer to us.

Q. Then you did not make that transfer?

A. No, sir; but we have attempted; we have taken action.

Q. You misunderstood my question. I ask you, where stocks have been forfeited to you by the protest of the note on which they were pledged, in what instance have you, on transferring these stocks to the Germania National Bank, transferred them to your clerks?

A. *We never transferred them to our clerks.*

Q. Then this is the sole instance in which you made such a transfer?

A. We never had occasion to transfer them.

Q. You never had stocks pledged to you as collateral that were forfeited?

A. Except the insurance company.

Q. This is the only instance that occurred in the Germania Bank?

A. Yes, sir.

Q. And yet you say you were in the habit of transferring such stocks to your clerks?

A. It is the rule in the bank.

Q. Is that rule in the minutes or by-laws?

A. No, sir.

Q. How can it be a rule, if this is the only instance in which it has been applied?

A. Because it is the only instance that occurred.

Q. But there is nothing in the minutes or by-laws to show that it is the rule of the bank?

A. It is only the rule of the officers in such cases.

Q. There is no record of it?

A. No, sir; there is none needed."

On re-examination, said witness explains, that when he states that it is a *rule* to transfer, he means it is *the habit* of business.

In closing this abstract of testimony, we call attention to the first report of the first receiver of said Crescent City National Bank, introduced in evidence by the defendants. (Record, pp. 104, 106.) Also to the transcript from the stock ledgers of said Crescent City National Bank, which was also introduced in evidence by the defendants generally. (See Record, pp. 107, 110.)

The Argument.

In regard to the appeals of Alcus, Scherck & Autey and the Crescent Mutual Insurance Company, but few suggestions are necessary. Full abstracts of their answers have been made, not because they show any valid defense as to either, but that this court may see that upon their own chosen grounds neither had the shadow of cause to complain of the decision of the lower court. This we have done, because we shall ask not only a confirmation of the decree rendered against each of these defendants, but damages as for a frivolous appeal. In fact, we shall ask a similar order as against respondent West. We will separately notice, first, the appeal of

Alcus, Scherck & Autey.

All averments of these appellants, in their original answer, as to the sufficiency of the assets of said Crescent City National Bank to satisfy its liabilities, their denial of any necessity for collecting any amount from shareholders

of said bank, and of the power of the Comptroller of the Currency to order such collection, with all averments and denials of like character, will be passed without comment, as they will be in all the other answers. Undoubtedly they might have been stricken out, upon proper motion in the court below, as irrelevant and impertinent; but additional delay might have ensued, and they are, perhaps, harmless.

These appellants, in the body of their original answer, do not admit or deny ownership of stock, but, answering complainant's interrogatories, they admit that they once owned seventy 70) shares of the stock of said Crescent City National Bank, but say that on the blank day of blank they sold said 70 shares to one *Julius Fox*, a clerk, aged *about* twenty-one years, for the sum of five dollars ($5)! (Record, p. 25.) Thus stood the record for nearly a year, when said appellants filed a supplemental amended answer, (Record, p. 27,) in and by which said alleged sale to said Fox is abandoned, and they admit the ownership of said 70 shares at the date of the suspension of said bank.

This admission, with the documentary evidence, as produced and proved by complainant, hereinbefore cited as "Exhibits A to M," fully establishes the liability of said appellants to the amount of the decree rendered against them. The court could not have done less or otherwise than it did, in thus decreeing, without ignoring or setting at defiance the most unequivocal adjudications of this supreme tribunal; and when the said defendants appealed from the decree thus rendered, their purpose must have been delay, or to display their contempt for the solemn judgment of this court.

If we must charitably believe that delay was the object, they have achieved their end, despite our motion to dismiss, made and overruled years since! In any view, it is respectfully submitted that the imposition of proper damages will be both just and salutary.

THE CRESCENT MUTUAL INSURANCE COMPANY.

Equally palpable is the correctness of the decree from which this company appeals. Upon the general documentary evidence above mentioned, the complainant was entitled to his decree as rendered, because the answer of said insurance company virtually conceded the ownership of the stock of said National bank, as charged in complainant's bill. True, there was a *quasi*-denial of such ownership, but it was coupled with such an admission of facts that it amounted, at most, only to a denial of the law. This scarcely requires elucidation, but it is easy.

The Crescent City National Bank had once been a State banking corporation, and had been converted into a National association in strict accordance with the provisions of the National Currency laws. This is averred in the bill; is not denied, but in effect is admitted, by the answer, and is moreover proved by the production in evidence of the Comptroller's certificate of organization. (Exhibit *B*, Record, p. 56.) The answer of said insurance company further admits, that at the date of the said change in the corporate organization of said bank said company owned 130 shares of the stock of said bank, at the par value of $100 per share; and the answer to the second interrogatory (Record, p. 29) shows that said company assented to said change; authorized "a Mr. Newman to sign an agreement, converting said Crescent City into a National bank"; and that "said company had received dividends,"—clearly meaning dividends paid by said National bank.

These facts and admissions make a clear case against said company. By operation of law, the company became a shareholder in the National bank to the extent of the 130 shares owned by it at the date of the change, with all rights and subject to all the liabilities imposed by law upon such shareholders. The language of the National Bank act (Rev. Stats., sec. 5154, latter part of the section) is as follows:

"When the Comptroller of the Currency has given to such association a certificate under his hand and official seal that the provisions of this TITLE have been complied with, and that it is authorized to commence the business of banking, the association shall have the same powers and privileges, *and shall be subject to the same duties, responsibilities, and rules in all respects*, as are prescribed for other associations originally organized as National banking associations, and shall be held and regarded as such an association." (See, also, as to conclusive character of such certificate, *Casey, Receiver, &c.*, v. *Galli*, 94 U. S., 673.)

To the foregoing, it is legitimate to add, that the transcript from the *stock ledgers* of the said Crescent City National Bank, put in evidence by defendants, (Record, p. 107,) not only shows that said 130 shares had been duly transferred, but stood "posted" to said insurance company at the date of the failure of said bank. More need not be said. True, the insurance company denies, as do all the appellants, the right of complainant to recover upon the case made by his bill; but that is mere denial of the law, put in, it may be, in the absence of all good grounds of defense, and worthy of notice only as showing how frivolous is the appeal to this court.

Unhesitatingly anticipating confirmation of the decree rendered below, *as* unhesitatingly do we ask damages for the inexcusable delay.

BENJAMIN J. WEST.

It is confidently believed that this appeal will give the court as little difficulty as either of the two preceding. It is only necessary to invoke the precedent of *Case, Receiver, &c.*, v. *Marchand*, decided at this present term, asking the court to abide by its own action and ruling as therein enunciated, and confirmation of the decree rendered against West in the court below must follow.

Evidently that court was satisfied, and therefore found

either that there had been no consummated sale by said West to his said salesman and clerk Vincent, or that such assumed sale was a mere pretense, simulated, fraudulent, and void. The evidence of West alone, under then existing circumstances, furnished, and still does, abundant ground for either of these conclusions; and, upon the authority of the Marchand case as above, this court will not, in such instances, interfere with or disturb such findings of fact of the lower court.

The time of the pretended sale was suspicious. It was, as is claimed, the 13th of March, the very last day on which said bank paid the checks of depositors—at least it stopped paying them on the 14th; (Record, p. 37;) and about those days, as is fairly inferable from the receiver's report, put in evidence by defendants, (Record, p. 105,) transfers of the stock of said bank became epidemic. The transaction, as West narrates it, is too gauzy to be at all satisfactory. It wants the incidents or characteristics of an ordinary prudent business arrangement. No money was paid; no note given; there was no written memorandum about it; the amount of the sale was not even charged in account. According to the answer, the price agreed upon was *about* $10 per share; and although in his testimony West omits the word about, yet what he does say, as to the consideration, is even more equivocal. He there states (Record, p. 44) that the consideration "was a balance of account," &c.; and when asked what was the amount actually received, he replies that "he cannot say, because it was mixed up with other matters; and after the absolute failure of the bank he (Vincent) said he ought to exonerated"!

Now, how could this remark of Vincent, or the fact of the mixing up with other matters, prevent West from knowing and stating what he actually received, if the transaction was *bona fide* and entered on the books, as prudent business men do enter all real bargains and sales? But, as already stated, no account was made of the matter, and, therefore,

to speak of it as "a balance of account" was simply evasion.

West admits that he became alarmed about the bank, and concluded it was best to sell his stock. It does not appear that Vincent was a dealer in stock, or anxious to purchase these shares or any other. He did not propose to West to buy, but West proposed to sell to him; and, stranger still, he offered to sell, and did sell, at *about* $10 per share, stock which he says the president assured him was worth not less than $50 a share! Besides, it does not appear that Vincent was a man of any means beyond the salary paid him monthly; and yet, for six or eight months after this alleged sale, West permitted this salary to be paid as it fell due, without once hinting the propriety of applying any portion of it to the purchase-price of the stock! In fact, West permitted Vincent to draw his salary to the end of his service; and his testimony closes with statements not only *conceding that Vincent owed him nothing save for goods subsequently sold*, but which show that if there had been a pretended sale of said stock to Vincent, West consented that it *was*, and should be considered, only as a pretense!

Other criticisms could be added; but surely it is unnecessary to multiply words, or even dwell at any length upon the fact that West denies all illegal intent.

Can a case be found in all the books, a case of unquestionable fraud, in which the corrupt purpose was not denied with solemn oath by one or both parties, as prompted by interest?

As in regard to the two preceding appeals, so here we respectfully submit that we are not only entitled to affirmance of the decree of the Circuit Court, but that the imposition of damages will also be as justifiable and proper as in any conceivable case. At the earliest practicable period we moved to dismiss this appeal, as well as that of Aleus,

Scherck & Autey; but technical points were against us, and we were compelled to submit to the unavoidable delay, for which such damages will, at best, be small compensation.

THE GERMANIA NATIONAL BANK.

We come to the consideration of the last of these appeals, with the frank concession that here we encounter difficulties not met with or involved in either of those already discussed; but we hope to be considered equally frank and sincere, as we assuredly are, when we add, that after careful investigation these difficulties do not appear as formidable as at first sight, and are far from insurmountable. To our minds, upon critical examination they entirely vanish.

To preserve distinctions, and for brevity, we will henceforth designate the two banks as the "*Germania*" and the "*Crescent*" banks. Now let us see precisely what are the conceded and what the controverted points.

1st. There is no controversy as to the number of shares of stock involved. That number is one hundred (100).

2d. Nor is there much, if any, dispute as to the circumstances under and by virtue of which said *Germania* Bank became, as we insist, owner of said shares, and therefore liable to respond, as was decreed by the court below.

Said 100 shares originally belonged to the commercial firm of *Phelps, McCulloch & Co.* This firm procured a discount from said Germania Bank of $14,000, giving therefor its note, which matured March 10, 1873. To secure payment of this discounted note, said Phelps, McCulloch & Co., on the day of its date, or about then, by written contract of pledge, pledged to said Germania Bank these 100 shares of stock, perhaps with the usual power of attorney to make a transfer upon failure to pay the note. The

note went to protest, and thereupon one *Herm. Roehl*, acting as the attorney of said Phelps, McCulloch & Co., under said pledge, on said 10th day of March, 1872, transferred seventy-six (76) of the 100 shares to said Germania Bank; and on the same day said Herm. Roehl, assuming to act as attorney for said Germania Bank, transferred said 76 shares to one W. A. Waldo. On the same day said Roehl, acting as attorney for said firm as aforesaid, also transferred the remaining 24 of said 100 shares to said Germania Bank; and on the next day, March 11, said Roehl, again assuming to act as attorney for said Germania Bank, transferred these same 24 shares to said W. A. Waldo.

All said transfers were made upon the proper transfer book of said *Crescent* Bank. It does not appear that said Roehl held any power of attorney from said Germania Bank to make said transfers to said Waldo, but said Roehl was then, and still is, cashier of said Germania Bank. Said Waldo was then a clerk in the employ of said last-named bank, and he departed this life before the commencement of this suit. (For the transfers, see Record, pp. 77, 78.) It is not claimed that said Waldo purchased said 100 shares of stock, nor that they were in any way mortgaged or pledged to him, nor that he had the slightest interest in them, in any way, manner, or form whatever; but it is insisted that they were transferred to him as the mere naked agent or trustee of said Germania Bank, to be held by him, and that they were held by him solely as such agent or naked trustee, subject entirely to the order, direction, and control of said Germania Bank, as his principal, and as absolute owner of said shares.

Moreover, this Mr. Waldo was no general agent for said Germania Bank,—only an ordinary clerk in its employ. It does not appear that for any other purpose than this special one, he had ever before been, or was thereafter made, the agent of said bank. Indeed, it is only as an inference that we may conclude that Waldo was made aware

of the honor thus thrust upon him, while not the slightest effort was made by said Germania Bank to show any necessity for putting said stock in the keeping of said Waldo as agent, save the one which, as we insist, the law will not tolerate. Other facts are undisputed, but they may be more appropriately noticed while discussing the controverted points; and those may now be stated interrogatively, as follows:

1st. Putting out of view, for the present, said alleged transfers to said Waldo, does the record disclose facts sufficient to justify the decree rendered by the court below against said Germania Bank?

2d. Conceding an affirmative response to this first question, did said alleged transfers to said Waldo operate to relieve said Germania Bank from said liability as found by said decree, and should this have been the judgment and decree of said lower court?

To the first of the above interrogations, the authorities return an affirmative answer. Here let us remark, in passing, that although the transcript from the *stock* ledger of said Crescent Bank, introduced in evidence by defendants, (Record, pp. 107–110,) shows 50 of these shares still standing in the name of Phelps, McCulloch & Co., it is none the less true that on the *transfer* book of said last-named bank (where, by law, transfers of stock should be made) the entire 100 shares were transferred to said Germania Bank on the 10th of March, 1873. The transfer book had not been fully or truly "*posted*." Therefore it is correct to say, that but for said transfers to said Waldo, on the 10th and 11th of March, the said 100 shares would have stood on the proper book of said Crescent Bank in the name of said Germania Bank, the latter holding the same by virtue of said written act of pledge ("Document C," Record, p. 16)

as security for payment of said note of Phelps, McCulloch & Co.

We repeat, that, perhaps without an exception, the adjudications are, that under such circumstances the personal liability to respond as shareholder attaches. Amongst others, the following cases are in point:

Bowden, Receiver, &c., v. *Farmers and Mechanics' Bank, &c.*, 1 Hughes, 307.
Magruder, Receiver, &c., v. *Colston et al.*, 42 Md., 349.
Hale v. *Walker*, 31 Iowa, 344.
Grew v. *Breed et al.*, 10 Metc., 569.
Crease v. *Babcock*, 10 Metc., 525.
Holyoke Bank v. *Burnham et al.*, 11 Cush., 183.
Adderly v. *Storm*, 6 Hill, 624.
Matter of Empire City Bank, 18 N. Y., 199.

Bowden, Receiver, &c., v. *Farmers and Mechanics' Bank, &c.*, was a suit brought by a receiver of a National bank to enforce the individual liability of its shareholders. His bank failed in May, 1874. In February, 1872, one Burwell owned 20 shares of its stock, and then duly transferred the same to said defendant bank. This transfer, though absolute on its face, was in fact made to secure a debt owed by Burwell to the last-named bank. In August, 1872, Burwell paid this debt in full; whereupon the certificate for said shares was delivered to him, with ordinary power of attorney to *re*transfer said stock to himself on the books of said National bank; but such retransfer was never consummated; and when said National bank suspended, these 20 shares appeared on its books in the name of said Farmers and Mechanics' Bank.

The court (Jiles, J.) held, in substance, that the creditors of a National bank, under such circumstances, and the receiver as their representative, might rightfully look to its books, and need not look elsewhere, to determine who were its shareholders and liable as such; and judgment was rendered against said defendant bank accordingly.

Magruder, Receiver, v. *Colston et al.*, was also a National bank case, in which the same doctrine was enunciated as in the Bowden case. There was also an attempt to raise and settle the question of the effect of a transfer made to avoid the statutory liability as shareholders. But the court held that it was not necessary to consider the point, inasmuch as the mortgagee or pledgee of the stock had only done what it was his right, and even duty, to do in selling upon condition broken, &c.; in this respect following the case of *Holyoke Bank* v. *Burnham et al.*, 11 Cush., 183, above cited, where the court, for the same reason, declined to consider the question of what might be the effect of a transfer made in bad faith. In this last case, as in the Bowden case, it appeared that the mortgage debt, or debt for which the stock had been pledged, had been discharged; and yet, as the shares of stock still stood in the name of the pledgee on the books of the corporation, (a manufacturing company,) such pledgee was held liable, &c.

Grew v. *Breed et al.*, 10 Metc., 569, was a suit predicated upon a bank charter which made the shareholders liable to the billholders on liquidation in proportion to the amount of stock held by each, &c. It was decided by *Shaw, Ch. J.*, that those who held stock merely as collateral security, or as trustees, were liable personally, and that, too, whether (in case of trustees) the trust did or did not appear on the books of the bank. It was also ruled that administrators of such holders were liable.

In *Hale* v. *Walker*, 31 Iowa, 344, the facts were, that Walker loaned to the president of a National bank some United States bonds, taking as security for such loan a pledge of the stock of said bank, duly transferred to him on the bank books. While the stock thus stood in Walker's name, the bank failed, its stockholders were called upon to contribute to the payment of liabilities, and

Walker, with others, was sued. He pleaded the fact that the stock had been transferred to him as security as above, and that he had no other ownership of or interest therein. If we remember rightly, he also filed a bill in chancery to enjoin collection; but the court held his defense unavailing, and gave judgment against him.

Adderly v. *Storm*, *Crease* v. *Babcock*, *and Empire City Bank*, above cited, are to the same effect. We need not go into details, nor cite, as might be done, additional cases.

2. The second question presents, as is conceived, the only seeming difficulties in the case, and, we repeat, they are in our judgment only seeming—not real. Indeed, we believe it can be established, and we shall first attempt to establish, that the Germania Bank should be held liable for, and as owner of, these 100 shares, upon the theory and version of affairs set forth as facts by its own officials; and conceding, for the purposes of present argument, that in transferring said shares (or attempting so to do) to said Waldo there was no intended bad faith or illegal purpose.

Even while considering this proposition, it need not be forgotten, but should rather be borne in mind, that the assumed transfer to said Waldo occurred at a time when rumors, suspicions, and inquiries as to the condition of said Crescent Bank must have been rife. In the nature of things, the atmosphere of commercial and financial circles in New Orleans must have been full of them. Protest of the circulating notes of said Crescent Bank was not, indeed, made until the 17th March; but on the 14th of that month, only three days after the consummation of said transfer, said bank had refused payment of the checks of depositors. Would there not have been something more than "street rumors" as to such a fact as this? And what had been the situation before that time, even prior to the transfer of said

stock? The testimony gives no uncertain answer. Lizardi & Co., of London, failed on the 13th day of February next previous. It was known in New Orleans by the bank officials and many others the next day, though perhaps not generally known until the 16th. On the 13th inst. the balance due depositors was $506,526. The very next day $102,595 of this balance was withdrawn! And this was but "the beginning of the end." On the 25th of February $406,555 of this balance had been drawn out! On the 1st of March only $28,956 of it remained! (Record, p. 37.) These were some of the premonitory symptoms of the final crash, so near at hand; such symptoms as almost invariably precede and (being inevitably notorious) give warning to the business public of the collapse soon and sure to ensue. We repeat, this condition of affairs, extending over a month's time, must have burdened the air with rumors and suspicions, putting every person directly or indirectly interested on the *qui vive* for the worst, and to know what that "*worst*" was.

Rapidly the crisis is reached. The explosion occurs, and creditors, whose suspicions have already put them upon the anxious lookout, hasten now to learn what, if anything, may be rescued from the ruins. Let it be supposed that a creditor thus examining comes upon the transfers of stock, and there, amongst many of recent date, he discovers the transfer of these 100 shares, first to said Germania Bank, and immediately thereafter to the clerk Waldo. Naturally he hastens to the officials of said Germania Bank for an explanation. If then and there he is assured that the facts are as set forth in the answer of said bank, and the testimony of said officials as they appear in the record of this cause, may he not conclude that said Germania Bank is and must be held liable as a shareholder?

To illustrate this view, without undue coloring of said testimony and answer, the supposed interview may be stated dialogistically in this wise:

CREDITOR: Exploring the ruins of the exploded Crescent Bank, I discover that the stock lately owned by Phelps, McCulloch & Co. (100 shares) had very recently been transferred to your Germania Bank, and by the latter to your Mr. Waldo. May I ask for the details?

OFFICIALS: Certainly. The facts are, in brief, that Phelps, McCulloch & Co. pledged the stock to our bank as security for a discount which they failed to pay at maturity, and thereupon we had the stock transferred to the bank to protect it as against other creditors.

CREDITOR: But the transfer to Waldo,—what means that?

OFFICIALS: Oh, that was merely the force of *habit*. Waldo is simply the agent of the bank, holds only as such, and is bound to retransfer when ordered.

CREDITOR: Then Waldo does not own the stock and has no interest in it?

OFFICIALS: Not at all. *Waldo*, on that transfer book, stands for "Germania National Bank." He has not the slightest interest in the stock. He is a mere figurehead—the mere shadow of the bank in the transaction.

CREDITOR: Exactly so. I presume it is all right, and, as you say, merely the result of *habit*. But, as a creditor, I think I may, and probably shall, look beyond the figurehead to the reality—past the shadow to the substance. If "Waldo," on that transfer book, stands for "Germania National Bank" for one purpose, it must for another. You may not make a dividing line of ownership just where possible benefits end and possible liabilities attach, ignoring the latter.

With all due modesty, it is respectfully submitted this supposed conclusion of the creditor is sound. It is a legal axiom, "*Quia facit per alium facit per se*;" and, say the au-

thorities, "Possession of personal property by an agent is possession by his principal."

Cutter v. *Copeland*, 18 Me., 127.
Coggburn v. *Simpson*, 22 Mo., 351.
Bean v. *Smith*, 20 N. H., 461.

Why shall not the Germania Bank be held to the consequences of a transfer which, according to the legal meaning of its own answer, is precisely the same, is to serve the same end, as though there had been no substitution of the name of the alleged agent for that of the principal?

Again: It is respectfully submitted that the alleged transfer to Waldo is void for want of authority.

What authority said Germania Bank had to deal as it did and assumed to do with said 100 shares of stock, was derived from the written act of pledge, (Record, pp. 16, 17,) which is made part of the answer of said bank. Said answer, in responding to interrogatory third (3) of the bill, (Record, pp. 13, 14,) expressly bases the right and power of said bank to make said transfer to Waldo upon said act of pledge, and upon that alone. There was no other alternative. This act was and is its sole source of power in that regard. On the original certificate of shares of Phelps, McCulloch & Co., as turned over to the bank, there may have been the ordinary power of attorney; but if so, even that was filled out, as *Rochl* (cashier) swears, with the name of the bank; and in any event such power was executed in pursuance of said pledge, and to carry out its purposes and ends, and for no other object whatever. Now, we submit that said act of pledge nowhere covers or delegates the authority to make the assumed transfer to Waldo. That any express grant to that effect is to be found, will not be pretended; we deny that it may be implied. The right of the bank to transfer the stock to itself, as was done, may legitimately rest upon implication, to enable the bank

to preserve its priority and to protect itself from interference by other creditors. Whether by so doing there was the hazard of incurring other and greater perils; whether in thus endeavoring to shun Scylla's rocks there was not the more imminent danger of foundering in Charybdis, was for the bank to determine. But having determined to take the risk of thus endeavoring to protect itself, surely by so doing the limit of its power to transfer (except upon actual sale made to realize satisfaction of the debt to the bank) was reached. No more by implication than by express words, did the act of pledge justify this absolute unconditional turning over of this stock to a third person, bound only by his honor, but by no scratch of a pen, to account for said stock to the bank or any other party!

If the transfer to Waldo was unauthorized, and therefore void, it follows that the decree rendered by the lower court was valid, as the books of the Crescent Bank showed that said 100 shares were owned absolutely by the Germania Bank.

II. Thus far the argument has proceeded upon the hypothesis that the transfer to Waldo was made in entire good faith. Here it would be pleasant to end the discussion, and we would gladly do so, did not the facts so unequivocally indicate another view of the matter, that professional duty will not permit it to be passed unnoticed.

The facts and circumstances, in our judgment, prove, beyond room for cavil, that said transfer was made to relieve said Germania Bank from any possible statutory liability as shareholder of said Crescent Bank. For this reason, it is and should be pronounced fraudulent and void.

Surely no elaborate argument is essential upon the law involved in this proposition. Fraud is—must be—as poisonous and fatal to the validity of such a transaction as when it is found lurking in any other, to the hinderance of cred-

itors. If not, why not? Is it said the assignee may be as responsible and solvent as the original holder, and thus the change may be entirely harmless? The reply is, such a supposed case would be very different from the one under consideration; for under such circumstances it would be difficult to conceive an intent to hinder or defeat creditors. It seems too clear for argument, that where a holder of stock, who is legally and pecuniarily responsible, transfers his shares to one who is worthless, or who is beyond the jurisdiction of the law, or when he so transfers that no liability is incurred by his assignee, he as certainly perpetrates a fraud, such as the law will notice and nullify, as does the judgment debtor who deliberately conveys his estate so that it may not be reached by execution.

It is true, that in two of the cases already cited this point was raised but not decided, because it was unnecessary to do so; and it is also true, that but few decisions are to be found upon the precise question. We have come upon but one reported case, viz.: *Bowden, Receiver, &c.*, v. *Santos et al.*, 1 Hughes, 158. Even this, as is seen, is only the ruling of a subordinate tribunal; but we may be permitted to say that the reasoning of the judge is so clear and concise, so grounded upon principle and supported by analogies, as to be, to our apprehension, conclusive. We should feel content to rest the legal question upon this decision alone, even if the point had not been virtually put at rest by this court, as it was in the *Marchand case*, above cited, decided at the present term.*

We pass to consider the facts tending to show that the transfer resulted from unwarrantable motives. In so

*After the manuscript of this brief had been prepared for the printer, the writer came upon a reference to several State decisions which undoubtedly sustain the doctrine of *Bowden* v. *Santos*, but he could not take the time to examine them. They are cited in *Angell & Ames on Corporations*, section 623, 9th edition. One is the case of *Van Riper*, 20 Wend., 614. Another is *Marcy* v. *Clark*, 17 Mass., 330.

doing we are not unmindful that the answer of the Germania Bank denies all bad faith. Notwithstanding the general rule, we submit this denial should have no great weight in determining what is the real truth.

It appears that the then president of the bank, one Louis Schneider, was sworn to the answers to the interrogatories, but the answer proper was put in under the corporate seal. The conscience of a corporation is not over-sensitive. Besides, it is almost the invariable rule, as before intimated, that when transfers are attacked in court for fraud, the attacking party is met at once with the solemn oaths of the parties charged, that everything has been done *bona fide*. Almost without an exception, it is by consideration of the circumstances that the "*true inwardness*" of the transaction is discovered. In the present instance, these circumstances are unmistakable and conclusive. They will be referred to as briefly as possible.

1st. As has been suggested, the transfer occurred at a suspicious time—a time when, as may be inferred, the air was full of rumors and apprehensions of an impending crash. A month prior, (February 13,) the Crescent Bank had lost nearly a half million by the failure of its London correspondent, a fact notoriously public in New Orleans three days later. Then came the run upon its deposits, reducing this balance, from over a half million of dollars, to a mere nominal figure some days before the transfer in question. Meantime the Crescent Bank had been begging aid of nearly every neighboring bank save the Germania, and, to secure such aid, had drained its portfolio of its best assets—its discounted paper. Could these facts transpire without producing a panic? But we are not left to infer what the public condition was. *Soria*, a director of the Crescent Bank, swears that there *was* a panic, and that it was in this panic that he transferred his stock; while the books, as well as his testimony, show that he made such transfer on the 8th of March.

We will not believe that all these things could have transpired without the knowledge or even suspicion of the officers of the Germania Bank, notwithstanding their sworn asseverations to that effect, until forced to that as the only possible reasonable hypothesis. Happily, there is a more plausible theory upon which to account for this remarkable feature of their testimony.

Both of these gentlemen (Roehl and Cassard) show unmistakably, that at the time when they testified their memories of dates, and of the order in which events had transpired, had signally and sadly failed. For example, Mr. Roehl thinks the failure of Lizardi & Co. was not known in New Orleans until after the transfer of stock to Waldo; and Mr. Cassard is quite sure the transfer to Waldo preceded by at least ten days the failure of said London house, or at least any knowledge of it in New Orleans. Other illustrations could be given, but we may better refer the court to their evidence. Thus may we charitably conclude their memories were at fault, and thereby account for their assumed ignorance of events which they admit they must (from their relations to a leading bank) have known, if they had been as notorious as all the testimony shows them to have been. *They must have forgotten what they did know!*

2d. The story of the alleged transfer, as given by said bank officials, is unbusinesslike and unreasonable. It is unbusinesslike to make such transactions so much a matter of *habit*, and yet to be obliged to admit at last that there could have been no such habit. For example, Roehl swears that the stock was transferred to the bank as soon as the note was protested, because such was the *habit* of the bank; and this idea is repeated. So, too, he says the transfer was made to Waldo because it was *not* the *habit* of the bank to hold stocks.

Cassard undertakes to put forward a similar theory, but

talks about a "*rule*" of the bank, then a *rule* of its officers, but when unable to show either, he, too, says it was "a *habit* of business." Finally, it comes out that, with one exception, this was the only instance where any such transfers could have been attempted, and the first that ever had been made either to the bank or its clerk. And thus vanishes the *habit* theory. It must not be overlooked, though, that Cassard denies any habit or rule justifying a transfer to any clerk of the bank.

In this connection, we might refer to many evasive replies to pertinent questions, as to their knowledge or suspicions in the premises, and particularly to the fact that as to some matters they were most marvellously unsuspicious. Thus, they knew that the stock of the Crescent Bank was far below par—that it had declined rapidly from $85 or $90 to $35 per share, and yet they had not the slightest suspicion that there "was any danger," or anything seriously wrong!

3d. We need not further discuss the evidence of these bank officials. One of them, Mr. Roehl, admits finally that the *chief motive* in making said transfer to said Waldo was *to avoid the liability imposed by the bank law;* and we may rest on this admission, the more especially as it is impossible to show any other plausible motive for the act.†

Nor does it place the bank in a more favorable position, if it is shown that this *motive* had crystallized into a *rule*, written or unwritten. Even a by-law cannot sanctify what is inherently a FRAUD!

While we shall not attempt to anticipate the grounds to be assumed by counsel for the other side, it may be proper to notice one matter which may be made suspicious. We allude to what is stated as to the market price of said stock, and the sale made as sworn to by Soria, and cited in the testimony of Roehl and Cassard. The latter says a broker gave him the price. Undoubtedly it was *the* broker who

† Vide pp 17–18 also Record p 96 last answer of Roehl on cross examination

made this one most extraordinary sale. We say "extraordinary," because it stands alone; it was a sale of the stock which had been held by one man in his own right, and the desire was to include 100 shares which he had also held for the Crescent Bank. There is no proof that any other shareholder was solicited to sell, either at the figures named, or less, or more; and yet here was a sale, made *after the panic had set in*, on the very day of the transfer to said Germania Bank,—at a time, in fact, when other parties were willing to part with 70 shares for $5.

We suspect this one sale was arranged for a purpose; we cannot believe otherwise, but we only insist now that it cannot be taken as showing that on the 10th day of March, 1873, said stock was salable at $35 per share, or at any price. Other testimony forbids any such conclusion.

One other view, although novel, may be worthy of passing mention. The answer of said Germania Bank assumes that said stock was transferred to said Waldo and held by him as *agent* solely. In the testimony of the two officials, Mr. Roehl and Mr. Cassard, he is also characterized as agent of said bank. But, in fact, there was a transfer, or an attempted transfer, of the *title* to said stock. Thus, the legal effect of the transaction, if it had any validity, was to make Waldo the *trustee* of the bank. Now, although in one of the cases cited (*Grew* v. *Breed*, *supra*) it was decided that, by the charter then under consideration, trustees could be made liable as stockholders, the National bank act prescribes a different rule, and expressly exempts trustees from such responsibility. The provision (R. S., sec. 5152) is, "Persons holding stock as executors, administrators, guardians, or *trustees*, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in the same manner," &c.

If it be urged that this provision only applies to express trusts, we can only reply, the law does not so say. But there must be a remedy in some mode, against something,

or somebody. A transfer may not defeat the right of creditors, or of a receiver as their representative, to collect. Does it not follow that if such is the effect of a given transfer, it is, as against such creditors, or their representative, *fraudulent in law*, and void? Or may the doctrine be, that while the trustee shall not be troubled, the *cestui que trust* shall respond, even, as, by the terms of this section, the trust fund or estate, if there be one, must do?

Other propositions come to mind, but we are compelled to leave them unnoticed or, perhaps, for oral argument; and, closing here, we respectfully submit that the decree against said Germania National Bank was justified by the law and the facts, and, with the others, should be affirmed.

CHARLES CASE,
Of Counsel for Appellee.

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NOTA BENE.

The attention of this court is called to the proposition, that according to the express ruling in *Casey* v. *Galli*, 94 *U. S.*, 673, the decrees should carry interest at the legal rate (5 per cent.) from the date of the Comptroller's order making the assessment and directing collection.

CHARLES CASE,
Of Counsel.